

आयकर अपीलीय अधिकरण, इंदौर न्युक्लिमीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL,
 INDORE BENCH, INDORE**
 श्री सी.एम.गर्ग, न्युक्लिक सदस्य तथ श्री ओ.पी.मीन लेखक सदस्य के समक्ष
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER
 AND
 SHRI O.P.MEENA, ACCOUNTANT MEMBER**

आ/सं.अ.ि.ट.आ No.414 to 419/Ind/2012		
निर्धारण वर्ष/Assessment Year : 2002-03 to 2007-08		
Shri Kulwant Singh Bhatia, 178 Vishnupuri Annexe, Indore स्था.सं.ले./PAN: AEKPB 7313K	v.	Addl. CIT Range 3(1), Indore
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/Appellant by	Shri Anil Garg, CA
प्रत्यर्थी की ओर से/Respondent by	Shri Mohd. Javed, Sr. D.R.
सुनवाई की तारीख/Date of hearing	08-08-2017
उद्घोषणा की तारीख/Date of pronouncement	11-08-2017

आदेश /O R D E R

O. P. MEENA AM.

1. These six appeals filed by the Assessee is directed against the separate orders of Id. Commissioner of Income tax (Appeals)-I, Indore, [in short referred to as the CIT (A)] each dated 30.04.2012. These appeals pertains to Assessment Years 2002-03 to 2007-08, arisen from the penalty order passed under section 271(1) (c) of Income Tax Act, 1961 (herein after referred to

as “the Act”) by the Addl. CIT Range- 3(1), Indore dtd. 29-06-2010 (hereinafter referred as the AO). These six appeals involve a common issue, arising out of the same set of facts and were heard together. As a matter of convenience, therefore, all the six appeals are being disposed of by way of this consolidated order.

2. While material facts of all these cases are the same, inasmuch as all the six appeals before us relates to the assessee Shri Kulwant Singh Bhatia who belongs to Bhatia Group of Indore, in which search and seizure operation carried out on 25 September 2007 at various business premises and residential premises. This group is engaged in the coal trading. We are taking up the appeal for the assessment year 2002-03, there findings of which would *mutatis mutandis* apply for other assessment years as well. The following grounds of appeal have been taken I.T.A. No.414/Ind/2016 for the assessment year 2002-03:

- 1.** *That, the learned CIT (A) grossly erred, both on facts and in law, in upholding the Order of Penalty u/s 271(1)(c) of Income Tax Act,1961 resulting into confirmation of the penalty of Rs. 2,84,090/-*
- 2.** *That, the learned CIT (A) grossly erred in confirming the penalty without considering the material fact that the appellant had neither concealed nor furnished inaccurate particulars of his income for the year under consideration and therefore,, he was not liable for any penalty u/s. 271(1)(c) of the Act.*

3a) That, the learned CIT (A) grossly erred in confirming the imposition of penalty, which is solely based on the additional income declared by the appellant in his return of income furnished under section 153A.

3b) That, without prejudice to the above, the learned CIT (A) grossly erred in confirming the penalty which has been imposed by the learned AO without first reaching to any objective satisfaction as contemplated under the provisions of sub-section (1) of section 271 of the Act.

2. Additional ground of appeal: During the currency of appeal, the assessee has also filed an additional ground of appeal against the levy of penalty under section 271(1)(c) as under:

1. That On the facts and in the circumstances of the case, the imposition of penalty is illegal inasmuch as a vague and cryptic show-cause notice was issued to the appellant under section 274 without making him aware of the specific charge leveled against him and therefore, in view of the decision of the Hon`ble Karnataka High Court in the case of CIT v. Manjunatha Cotton Ginning Factory [2013] 359 ITR 565 (Kar), the penalty so imposed by the learned AO deserve to be deleted.

3. The learned Authorized Representative of the assessee submitted that the additional ground of appeal be admitted as it is being purely question of law, goes to the root of the matter and no further inquiry is required for deciding the same as all facts

are already on record and issue arise out of impugned order. The ld. A.R. also placed reliance on following decisions: National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 (SC) [1999] 157 CTR 249 (SC), and National News Print & Paper Mills Ltd. 223 ITR 688 (MP).

4. On the other hand, the Ld. Sr. D.R. opposed the admission of additional ground.
5. We have considered the facts and material on record. The additional ground being legal one, hence, admitted. Reliance is placed on the decision of Apex Court in the case of National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 (SC) : [1999] 157 CTR 249 (SC) wherein it was held as under:

The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal (vide, e.g., CIT v. Anand Prasad [1981] 128 ITR 388 (Delhi), CIT v. Karamchand Premchand P. Ltd. [1969] 74 ITR 254 (Guj) and CIT v. Cellulose Products of India Ltd. [1985] 151 ITR 499 (Guj) [FB]). Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of

the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits.

6. Further, the Hon`ble Jurisdictional High Court in the case of Dy. CIT vs. Turquoise Investment & Finance Ltd.[2006] 154 Taxman 80 (MP)[2008] 299 ITR 143(MP) affirmed by Hon`ble Supreme Court [2008] 168 Taxman 107(SC) wherein it was laid down that

In view of the wide powers that the Tribunal is vested with as referred to and spelt out by Apex Court in National Thermal Power Co. Ltd. v. CIT [\[1998\] 229 ITR 383](#), the Tribunal cannot be precluded from considering the questions of law arising in an assessment proceeding not raised earlier, and restricted to issues arising out of appeal before the Commissioner. [Para 16]

Thus, the Tribunal was justified in law in recording a finding on an issue which was not raised by the assessee either before the Assessing Officer or before the Commissioner (Appeals) but was raised for the first time before the Tribunal and that too in an appeal filed by the Department.

7. In view of above facts and circumstances, the additional ground can be admitted where facts are already on record and there is pure question of law and no further enquiry or investigation on facts is required. In view of these facts and circumstances, the additional ground is allowed is to be admitted and the same is therefore, being disposed-of on merits in the succeeding paras.

8. A search and seizure operation conducted on September 25, 2007, wherein the assessee admitted additional income of Rs. 1,25,48,154. Consequently, a notice u/s 153A was issued and served upon an assessee for the assessment year under appeal. In response to notice under section 153A for above assessment years, the assessee has shown additional income of Rs. 2,05,21,580/- in the returns of income filed under section 153A of the Act for the assessment year 2002-03 to 2007-08 as against the surrender made during search at Rs. 1,25,48,154 under section 132(4) of the Act. Brief facts related to Assessment year 2002-03 are that the assessee has filed his return of income declaring total income at Rs.12,48,650/- including additional income of Rs.9,28,400/-.The assessment was completed u/s. 153A on December 18, 2009 by accepting returned income under section 153A for A.Y. 2002-03. During the course of assessment proceedings, the AO noted that the assessee has shown additional income due to search hence, penalty proceeding under section 271(1) (c) were initiated for all the assessment years. Further, the AO noted that the assessee has offered an additional income of Rs.9,28,400/- in the return of income filed u/s 153A. Since the said income was not declared in the return filed u/s

139, hence the AO initiated penalty proceedings u/s 271(1) (c) of the Act. The submissions filed by the assessee has been reproduced by the AO in the penalty order. The AO held that after insertion of Explanation 5A of Section 271(1)(c) with effect from 01.06.2007, the legal position is very clear and penalty for concealed income held to be levied. Since, the assessee has declared undisclosed income only after the date of search. Therefore, the fact that such income was offered u/s 132(4) during search proceedings does not take the assessee's case out of the clutches of the above deeming provisions. In view of these facts, the AO levied a penalty of Rs. 2,48,090/- being minimum penalty @100% of the concealed income of Rs.9,28,400/-. In the additional ground, the assessee has challenged the validity of notice under section 271(1)(c).

9. Being aggrieved the assessee has filed an appeal before the CIT (A). The assessee aggrieved with order of the AO filed appeal before Ld. CIT (A) who has also confirmed the said penalty. According to Ld. CIT (A) the provisions of section 271(1)(c) together with Explanation 5A brings the assessee liable for penalty in respect of additional income disclosed after search as the same was based on incriminating material. Accordingly, the

penalties imposed by the AO for the assessment years 2002-03 to 2007-09 were sustained. In addition, penalty of Rs.2,48,090/- for the year under consideration was confirmed.

10. Being aggrieved, the assessee has filed this appeal before the Tribunal. The ld. Counsel for the assessee submitted that the additional ground of appeal taken under Rule 11 of Income Tax Appellate Tribunal Rules 1963 is against the imposing penalty by issuing vague and cryptic show-cause notice for imposition of penalty without making the assessee aware of specific charge, hence, penalty deserve to be cancelled. The ld. Counsel for the assessee submitted income shown in these return were offered u/s. 132(4) as well as returns filed under section 153A. These incomes have been accepted in the assessment orders as such without any variation and objection. The learned counsel submitted that the blanket penalty proceedings were initiated in all the cases under section 271(1) (c). The ld. Counsel for the assessee took us through Paper Book Page No. 13 to 18 which are the copies of show-cause notices under section 274 which are vague and cryptic notice inasmuch as in the said notice, non applicable clause was not struck off by the AO . The penalty notices under section 274 read with section 271(1) (c) were

issued in the typed format without the striking off either of the two charges i.e. which is reproduced as under: “* **have concealed the particulars of your income oror “furnished inaccurate particulars of income”**. The Id. Counsel for the assessee contended that show-cause notice under section 274 is not mere empty formality but it has a definite purpose to make the assessee aware of the exact charges against him and the case, which is required to meet out. A clear notice not only a statutory requirement but even for the purpose of principle of *audi alteram partem* which requires that no one should be condemned unheard, a notice in clear term specifying the clear charges against an assessee is required to be given by an Assessing Officer before imposing a penalty. It was submitted that by not striking off the inapplicable clause, the Ld. AO has left the matter open for a complete guess work on the part of the appellant for presuming charges leveled against him and in such situation, it cannot be said that an effective opportunity of being heard was given to the appellant as contemplated under section 274 of the Act. Thus, the penalty proceedings were initiated without specifying any particulars or specific charge against the assessee in either the assessment order or even the penalty

notice. It is important to point out that no charge either of “concealment of income” or “furnishing of inaccurate particulars” was made in the assessment orders in all these cases. The learned counsel referred the assessment order and submitted that the perusal of the assessment order would show that it was simply stated that penalty proceedings are initiated u/s. 271(1)(c) and under section 271AAA . On this proposition the ld. Counsel for the assessee relied in the case of CIT v. Manjunatha Cotton Ginning Factory [2013] 359 ITR 565 (Kar)/263 CTR 153/ 93 DTR 111(Karn)[2012] 82 CCH 282 Kar HC, Asst. CIT v. M. P. State Tourism Development Corporation [2015] 26 ITJ 225 (Trib-Indore), Safina Hotels (P) Ltd. v. CIT [2016] 137 DTR 089 (Kar HC) , Uma Shankar Agarwal v. DCIT [2016] 46 CCH 0057 (Kol-Trib), Shabbir Allaudin Latiwala v. DCIT [2011] 29 CCH 0713(Rajkot-Trib) , Dilip N Shroff v. JCIT [2007] 291 TTR 519 (SC), Rishi Kumar Agarwal v. DCIT [2017] 6 TMI 396(Kol-Trib) ,Anand Satish Kumar Bhutada v. IKTO [2017] 5 TMI 482 (Pune-Trib) , Siddhi Home Makers v. ITO 5 TMI 121 (ITAT-Mum) [2017] and CIT v. SSA`s Emerald Meadows [2016] 8 TMI 1145(SC) in support of his claim. It was submitted in the case of CIT v. Manjunatha Cotton Ginning Factory [2013] 359 ITR 565

(Kar)/263 CTR 153/ 93 DTR 111(Karn) it was observed in para 59 that the practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy the requirement of law when the consequences of the assessee not rebutting the initiated 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, notices issued under section 274 should satisfy the grounds, which he has to meet specifically. Otherwise, principle of natural justice is offended if the show cause notice is vague. Based on such proceedings, no penalty could be imposed on the assessee. The Id. Counsel for the assessee further submitted that following the this decision, the Hon`ble Karnataka High Court in CIT v. SSA`S Emerald Meadows [2016] 73 taxmann.com 248 (SC) [2016] 8 TMI 1145(SC) has dismissed the appeal of the Revenue, which was filed against the ratio of reiterated by the Hon`ble Karnataka High Court by which Hon`ble High Court quashed the penalty on the ground of improper notice. The learned counsel also submitted that even in the matter of search case where penalty is levied under Explanation 5A to section 271(1)(c), following decision of CIT v. Manjunatha Cotton Ginning Factory

[2013] 359 ITR 565 (Karnataka), it has been held that the show cause notice u/s. 274 was defective as it does not spell out the grounds on which the penalty is sought to be imposed and consequently, penalty imposed was cancelled. The ld. Counsel for the assessee submitted that in the case of Asst. CIT v. M. P. State Tourism Development Corporation [2015] 26 ITJ 225 (Trib-Indore), this bench has held that the satisfaction of the AO about concealment of particulars of income of “furnishing of inaccurate particulars” of such income is essential before levying any penalty under section 271(1)(c). The ld. Counsel for the assessee also stated that in Dilip N Shroff v. JCIT [2007] 291 TTR 519 (SC) at para 83 and 84 it was observed that standard preforma used by the AO in issuing a notice without deleting inappropriate words tantamount to non application of mind and thereby it is not in accordance with principle of natural justice. With regard to observation of the CIT (A), that Explanation 5A to section 271(1) (c) are applicable, it was submitted that question of applicability would only arise when penalty proceedings are properly initiated by issuing valid and proper show cause notice under section 274. Therefore, this contention of the Ld. CIT (A) becomes redundant and out of context. So far as reference to

section 271(1B) is concerned the learned counsel submitted that the same is not relevant in the context of the basic issue that the penalty notices issued were defective as they did not spell out the ground on which penalty sought to be imposed and therefore, not validly issued. It was submitted that the issue of amendment of section 271(1B) with retrospective effect was raised before the Hon`ble Karnataka High Court in the case of CIT v. SSA`S Emerald Meadows [2016] 73 taxmann.com 248 (SC) as evident from the second substantial question of law raised by the Department, which the Hon`ble High Court declined to admit. Therefore, it was submitted that the Ld. CIT (A) grossly erred in confirming the penalty levied under section 271(1) (c) in these cases, which may kindly be deleted.

11. On the other hand, the Ld. CIT (DR) supported the orders of the lower authorities. The Ld. DR referring para 59 of the order of CIT v. Manjunatha Cotton & Ginning Factory (supra) submitted that in some cases case both offences in clause (c) are attracted. The Ld. DR referred decision of Mak Data P. Ltd. vs. CIT [2013] 358 ITR 593(SC) and contended that the AO has to satisfy whether penalty proceedings be initiated or not during the course of assessment proceedings and the AO is not required to record

his satisfaction in a particular manner or reduce in writing. The Ld. DR further submitted that in the case of Nemichand Jain v. ITO 2(1) Indore [I.T.A. No. 331/Ind/2015) dtd. 08.06.2016, the SMC bench this Tribunal held that it is suffice where the AO has mentioned that penalty proceedings are initiated separately. The Ld. DR submitted that in the circumstances co Mahesh Gandhi v. ACIT [I.T.A. No. 2976/Mum/2016 dtd. 27-02-2017, Mumbai Bench where typed show-cause notice under section 271(1) (c) is issued mentioning both limbs after recording satisfaction in assessment order. Therefore, it was urged upon us to uphold the order of Ld. CIT (A).

12. We have considered the facts, perused the material on record, and gone through the assessment order and penalty order and case laws relied by the parties. A perusal of the penalty order reveals that the AO has rejected the contentions of the assessee on the basis that the undisclosed income is declared as result of search was not recorded in books of accounts before the date of search. We find that the penalty notices under section 274 read with section 271(1)(c) and u/s. 271AAA were issued in the typed format without the striking off either of the two charges i.e. * ***have concealed the particulars of your income oror***

“furnished inaccurate particulars of income ”. Thus, the penalty proceedings were initiated without specifying any particular or specific charge against the assessee in either the assessment order or even the penalty notice. It is important to point out that no charge either of “concealment of income” or “furnishing of inaccurate particulars” was made in the assessment orders in all these cases. Further perusal of the assessment order reveals that it is simply stated that penalty proceedings are initiated u/s. 271(1)(c) and section 271AA. Thus, we find that the charge against which the penalty is to be levied was not specific. It is now a settled proposition that when the charge itself is not a specific and is vague, penalty cannot be levied. The Hon`ble Supreme Court in the case of T. Ashok Pai v. CIT (2007) 292 ITR 11 (SC) has laid down that it is a settled proposition that concealment of income and furnishing inaccurate particulars of income carry different connotation. It is settled proposition that where the charge for levying penalty is not specific, the notice issued under section 271(1)(c) is bad in law as it does not specify by which limb of section 271(1)(c) of the Act under which it has been initiated. When the notice does not

specify the charge for levy of penalty, it has been held that the penalty cannot be levied.

13. Further reliance in the case of CIT v. Manjunatha Cotton Ginning Factory [2013] 359 ITR 565 (Kar)/263 CTR 153/ 93 DTR 111(Karn)[2012] 82 CCH 282 Kar HC, wherein, it was observed in para 59 as under:

“the practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy the requirement of law when the consequences of the assessee not rebutting the initiated 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, notices issued under section 274 should satisfy the grounds, which he has to meet specifically. Otherwise, principle of natural justice is offended if the show cause is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.”

14. The above decision was further followed by the Hon`ble Karnataka High Court in the case of CIT v. SSA`S Emerald Meadows [I.T.A. No. 380/2015 dated 23rd November 2015] wherein the Hon`ble High Court has dismissed the appeal of the Revenue by observing that the Tribunal had allowed the appeal of the assessee holding that the notice issued by the Assessing

Officer under section 274 read with section 271(1)(c) of Income Tax Act, 1961 was bad-in-law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars. The Tribunal, while allowing the appeal of the assessee, had relied on the decision of the Division Bench of this Court rendered in the case of CIT V. Manjunatha Cotton Ginning Factory [2013] 359 ITR 565. It was further pointed out that SLP filed by the Department against this decision was dismissed by Hon`ble Supreme Court on 05-08-2016 reported as CIT v. SSA`S Emerald Meadows [2016] 73 taxmann.com 248 (SC). The learned counsel also submitted that even in the matter of search case where penalty is levied under Explanation 5A to section 271(1)(c), following decision of CIT v. Manjunatha Cotton Ginning Factory [2013] 359 ITR 565 (Karnataka), it has been held that the show cause notice under section 274 was defective as it does not spell out the grounds on which the penalty is sought to be imposed and consequently, penalty imposed was cancelled. The case law in the case of Mahabir Prasad Agarwal v. ACIT Kolkata Tribunal in [I.T.A. No. 738 & 739/Kol/2013 dated 15-10-2016] also support the case of

the assessee as the facts are identical with the facts of the present appeals as in these appeals the show cause notices issued before imposing penalty did not specified whether as to the assessee is guilty of having furnished inaccurate particulars of income or of having concealed particulars of such income. We may also draw support from the recent decision of coordinated bench Mumbai Tribunal in the case of Meharjee Cassinath Holdings Pvt. Ltd. v. ACIT Circle 4(2) in I.T.A. No. 2555/Mum/2012 order dtd. 28.04.2017 has also held that the notice issued u/s. 274 by the AO is untenable as it suffers from the vice of non-application of mind. In this case though the AO recorded in the assessment order that penalty proceeding under section 271(1)(c) are to be initiated for furnishing of inaccurate particulars of income, however, in the notice u/s. 274 both the limbs of section 271(1)(c) were reproduced in the preforma notice and the relevant clauses were not struck off. Whereas in the case of the assessee no specific charges were levied in the assessment order as well as penalty show cause notice.

15. The ld. Counsel for the assessee relied the case of M.P. Tourism Development Corporation (supra) which held that satisfaction of the AO about concealment is must before levying

penalty under section 271(1)(c). In this regard, our view is also supported by the decision of Hon`ble Supreme Court in case of CIT v. Suresh Chandra Mittal [2000] 251 ITR 9(SC), wherein the Supreme Court has upheld the decision of the Hon`ble Madhya Pradesh High Court CIT in the case of Suresh Chandra Mittal [2000] 241 ITR 124 (MP), wherein in similar circumstances; it was held that the initial burden lies on the revenue to establish that the assessee had concealed the income or had furnished inaccurate particulars of such income. Thereafter, in so far as the manner in which the statutory notice was required to be issued, the Hon'ble Court concluded as: ***Notice u/s 274 of the Act should be specifically state the grounds mentioned in section 271(1)(c), i.e. whether it is for concealment of income or for furnishing of incorrect particulars of income.***

16. The Hon'ble Supreme Court in Dilip N. Shroff v. JCIT, [2007] 291 ITR 519 (SC), has observed that ***while issuing the notice under section 274 r/w section 271, in the standard format, the Assessing Officer should delete the inappropriate words or paragraphs, otherwise, it may indicate that the Assessing Officer himself was not sure as to whether he had proceeded on the basis that the assessee***

had concealed his income or had furnished inaccurate particulars of income. We find that the AO has not struck down the relevant word/sentence in the cyclostyled performa of penalty show cause notice; therefore, the AO was not sure that on what ground he is levying the penalty. The case laws *Safina Hotels (P) Ltd. v. CIT* [2016] 137 DTR 089 (Kar HC), *Uma Shankar Agarwal v. DCIT* [2016] 46 CCH 0057 (Kol-Trib), *Shabbir Allaudin Latiwala v. DCIT* [2011] 29 CCH 0713(Rajkot-Trib) , *Dilip N Shroff v. JCIT* [2007] 291 TTR 519 (SC), *Rishi Kumar Agarwal v. DCIT* [2017] 6 TMI 396(Kol-Trib) ,*Anand Satish Kumar Bhutada v. ITO* [2017] 5 TMI 482 (Pune-Trib), *Siddhi Home Makers v. ITO* 5 TMI 121 (ITAT-Mum) [2017] also supports the contention of the assessee.

17. The decision of *Mak Data P. Ltd. vs. CIT* [2013] 358 ITR 593(SC) relied by Revenue says that the AO has to satisfy whether penalty proceedings are to be initiated or not during the course of assessment proceedings, but in the instant case, the AO stated he is satisfied the it is fit case for initiation of the penalty proceedings under section 271(1)(c) and 271AA , meaning thereby that the AO was not sure under which section he is initiating penalty proceedings. Further, in show-cause notice the

AO has not specified specific charges, hence, said decision is distinguishable on facts and law. In the case of Nemichand Jain (Supra) show-cause notice for penalty proceedings has specifically stated that the penalty proceedings under section 271(1)(c) are separately initiated. However, in the case in hand, there was no such mention. The decision of Mahesh Gandhi (Supra) relied by the Ld. DR is also inapplicable as in that case the assessee has filed revised computation of income on directors fee and capital gain on HDFC mutual fund during the course of assessment proceedings and the AO has specifically recorded findings in para 5 of the assessment order in details about “concealment of income”. Hence, facts of the said case are entirely different.

18. Considering above facts and circumstances and relying judicial precedents as discussed above, we are of the considered opinion that penalty levied under section 271(1)(c) is not sustainable in law, as no specific charge was levied in penalty show cause notices, hence, it is cancelled. Accordingly, all six appeals of assessee are allowed.

19. As the learned representatives of both sides have fairly agreed, that whatever we decide for the assessment year 2002-03

in I.T.A. No. 414/Ind/2012 will equally apply for assessment year 2003-04 to 2007-08 as mentioned in above format of appeal of this order, as well. All the material facts, but for differences in quantum, are the same. There is no dispute on this aspect at all, and the same consequences must, therefore, follow. Accordingly, the penalties levied under section 271(1)(c) in all six appeals of the assessee as mentioned above stands cancelled and our observations for the assessment year 2002-03 above will apply *mutatis mutandis* for all assessment years under appeals as well. Accordingly, levy of penalty for the assessment years 2002-03 to 2007-08 is cancelled and additional ground for all above years is allowed.

20. Since we have allowed the appeal on additional ground as discussed above, we therefore, refrain from deciding the other grounds of appeal on merits as same become infructuous

21. In the result, all the ix appeals as mentioned above are allowed.

22. The order pronounced in open court on 11.08.2017.

Sd/-

Sd/-

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

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

दिनांक /**Dated :11th August 2017**

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore