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

श्री डी. करुणाकरा राव , लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SRI D.KARUNAKARA RAO, AM
AND SRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.12 to 17/PUN/2013
निर्धारण वर्ष / Assessment Years : 2003-04 to 2008-09

Sanjay Dattatraya Kakade,
55/11A, Kakade Paradise,
Ashok Path Lane,
New Law College Road,
Pune 411 004
PAN : ALNPK3325J .... अपीलार्थी/Appellant

Vs.

ACIT, Central Circle-2(2),
Pune .... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.100 to 102/PUN/2013
निर्धारण वर्ष / Assessment Years : 2006-07 to 2008-09

M/s. Kakade Construction Company,
Kakade Capital, 1205,
Behind Shirole Petrol Pump,
Near P. Jog Classes of J.M. Road,
Shivajinagar, Pune 411 005
PAN : AABFK7509F .... अपीलार्थी/Appellant

Vs.

ACIT, Central Circle-2(2),
Pune .... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellants by : Sri Hari Krishan, AR
प्रत्यर्थी की ओर से / Respondent by : Sri Achal Sharma, CIT-DR

सुनवाई की तारीख / **Date of Hearing : 23.02.2018**		घोषणा की तारीख / **Date of Pronouncement: 28.02.2018**

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are nine appeals under consideration. This includes six appeals filed by Sri Sanjay D. Kakade, individual and three appeals filed by M/s. Kakade Construction company, the firm. All these appeals relate to the levy of penalty u/s.271(1)(c) of the Act. Considering the commonality of

issues, arguments and the facts, all these appeals are adjudicated by this composite order for the sake of convenience.

Facts in General:

2. The facts of these cases include that Sri Sanjay D. Kakade is an individual and is a Proprietor or Partner or Director of various Group concerns. M/s. Kakade Construction Company is one such firm where the assessee is a partner. It is engaged in the construction business in Pune. There was a search and seizure action u/s.132 of the Act on the group concerns and individuals of the group on 11-02-2009. The search resulted in seizure of incriminating loose papers, defective books of account etc. and the same resulted in the declaration of additional income of Rs.40 crores. During the search action, Sri Sanjay D. Kakade gave a statement on 12-02-2009 on behalf of the group concerns and himself offering to pay tax on such an income within a 12 months (answer to Question No.5 of the paper book of Page No.237). Subsequently, assessee filed written submission vide his letter dated 12.06.2009 stating the following :

> *"We have in the course of search action u/s.132 of the I.T. Act, 1962, made a declaration of Rs.40 Crores of additional income, based on various papers, records, books of accounts etc. seized/found at the residence and business premises in the hands of the various members of our group. We once again confirm the said declaration and declare our sincere intention to adhere to the said declaration made in the course of search action vide the statement u/s.132(4) recorded on 12-02-2009. Out of the said total declaration, a sum of Rs.10,57,69,958/- (Rupees Ten Crores fifty Seven lacs, sixty nine thousand nine hundred fifty eight only) pertains to companies/firms etc. as per details in the statement enclosed herewith. In respect of the balance amount of declaration, the exact details are being worked out on the basis of seized records/papers/books etc. found and the concerned income will be offered to tax in the hands of respective entities of our group vide returns to be filed in response to notices u/s.153A/139 of I.T. Act, 1961."*

3. After lots of developments and the follow up actions, the assessees filed the returns in response to notices u/s.153A of the Act. Assessee offered the said additional income in the returns and paid the taxes. The

search assessments in cases of both Sri Sanjay D. Kakade and M/s. Kakade Construction Company reached finality with or without further additions. The details relating to the issuance of statutory notices u/s.153A of the Act, filing of the return of income etc. are discussed in the respective assessment orders of the assessees. In the returns filed by the assessee declared the additional income while filing the return of income u/s.153A of the Act. Assessee claims that the additional income was suo moto in the returns under various heads in order to make it up the said additional income of Rs.40 crores involving various assessees and the assessments of the group. Thus, all the assessments with the additional income in cases of both the assessees for the AYs under consideration became final without any litigation on quantum/assessed income. Further, the penalty proceedings u/s.271(1)(c) of the Act for concealing the particulars of income in the original returns was initiated.

Eventually, AO levied penalty u/s 271(1)(c) of the Act and the same is confirmed by the CIT(A). Hence, in the present set of appeals in both of the said assessees, the correctness of levy of penalty both legally and on merits is the issue under litigation. Relevant facts are narrated in the succeeding paragraphs.

4. **Facts relating to Concealment of Penalty** : During the assessment proceedings u/s 153A rws 143(3) of the Act, AO initiated penalty proceedings u/s.271(1)(c) of the Act and the details of the satisfaction of the AO for such invitation and details of levy of penalty are appropriately discussed in the subsequent paragraphs of this order. Eventually, AO levied the penalty for all the years under consideration in the case of both the assessees i.e. Sri Sanjay D. Kakade and M/s.Kakade Construction Company. The CIT(A) confirmed the said penalty. Therefore, the assessees

filed the appeals before the Tribunal for all the six years involving A.Yrs. 2003-04 to 2008-09 in the case of Sri Sanjay D. Kakade and for the A.Yrs. 2006-07 to 2008-09 in the case of M/s.Kakade Construction Company.

5. We shall take up the penalty appeals in the case of **Sri Sanjay D. Kakade**, the individual for all the Six A.Yrs. from A.Y.2003-04 to 2008-09. To start with, we shall take up the adjudication of penalty matters of the appeal for AY 2003 - 04. Most of the issues, facts, the arguments and the counter arguments are common for all the appeals under consideration. .

ITA No.12/PUN/2013 A.Y.2003-04
Sri Sanjay D. Kakade

6. Assessee raised a solitary general ground originally in the appeal. The same reads as under :

> *"In the facts and circumstances of the case and in law, the Ld.CIT(A) has failed to appreciate that since there is no difference in the assessed income and income declared by the appellant in the return of income filed in response to notice issued by the Ld. AO u/s.153A of the I.T. Act, 1961, the penalty levied by the Ld. AO u/s.271(1)(c) of the I.T. Act, 1961 was bad in law, patently illegal, without jurisdiction and void ab-initio. The impugned penalty levied u/s.271(1)(c) of the I.T. Act, 1961 by the Ld. AO and as confirmed by the Ld.CIT(A) being bad in law the same may please be deleted."*

7. Further, the assessee filed 3 sets of additional grounds on different dates before us and the same are extracted as under:

A. Ist Set of Additional Grounds :

> *"1. The learned CIT(Appeals) has erred in confirming the penalty of Rs.3,60,000/-levied by the Assessing Officer u/s.271(c) of the Act.*
>
> *2(a). Assessment Year 2003-04 under consideration **is a closed Assessment Year** and the assessment was not pending on the date of the search. As such the assessment for this year has not abated. Therefore the Assessing Officer could not have disturbed the closed assessment **without there being any incriminating material found** during the search.*
>
> *(b) Since the taxation of the amount of Rs.8,10,000/- u/s. 153A of the Act itself **does not have legal basis,** the penalty u/s. 271(c) of the Act levied in respect of the said amount is bad in law.*

*(C). Penalty was not attracted in respect of income of Rs.8,10,000/- voluntarily **included by the assessee** in the return of income filed u/s. 153A of the Act, because the said income was declared before its detection by the department.*

3. The penalty order dated 30-06-2011 passed by the Assessing Officer levying penalty u/s 271(c) of the Act is without jurisdiction, ab-initio void and bad in law.

4. The learned Assessing Officer has erred in holding that there is deemed concealment as per Explanation 5A to section 271(1) (c) of the Income tax Act.

5. The amendment brought about in Explanation 5A to section 271(1) (c) of the Act by Finance Act (No. 2) 2009 with retrospective effect from 01-06-2007 is ultra-vires of the Constitution of India."

B. 2nd Set of Additional Grounds :

"1. The Ld. CIT(A) has failed to appreciate that the Assessing Officer has wrongly applied the provision of explanation 5A to Section 271(1) (c) of the Act whereas the said Explanation 5A cannot be applied to the assessee's case.

2. The Ld. CIT(A) has failed to appreciate that the amendment brought about in the said explanation 5A to Section 271(1) (c) of the Income Tax Act by the Finance (No.2) Act 2009, with retrospective effect from 1st June 2006 is ultra-vires of the Constitution of India."

C. 3rd Set of Additional Grounds :

"1. On the facts and in the circumstances of the case and in law, the order passed by the Assessing Officer levying the penalty u/s.271(1)(c) of the IT Act is without jurisdiction, ab-initio void, bad in law and unsustainable, since notice issued u/s. 274 r.w.s 271(1) (c) of the IT Act is not as per law.

2. On the facts and in the circumstances of the case and in law, the penalty proceedings in this case were vitiated because, the Assessing Officer has not deleted/ removed/ struck off the inappropriate limb/charge from the notice issued u/s. 274 r.w.s 271(1) (c) of the IT Act.

Therefore, the penalty order passed by the Assessing Officer u/s. 271(1) (c) of the IT Act is ab-initio void, bad in law and is unsustainable."

The above Additional grounds are found overlapping on certain issues. However, they revolve around the legal issues; (1) the issues relating to applicability of the pre-amended Explanation 5A to section 271(1)(c) of the Act. (2) unsustainability of the penalty proceedings when the ambiguity in the mind of AO is obvious from the satisfaction recorded in the search assessment orders; (3) taxation of certain income, as the same is taxed having no legal basis and finally (4) the issues of the merits

of levy of penalty on the addition of Rs.8,10,000/- is sustainable in the present case of a non-abated assessment; (5) if the items of income offered by the assessees in the search proceedings constitutes a voluntary act and in that case, the levy of penalty on such income is justified or not.

8. The facts relevant to the appeal for A.Y. 2003-04 in the case of Sri Sanjay D. Kakade includes that this is the case where the search u/s.132 of the Act conducted on 11-02-2009 and the notice u/s.153A of the Income Tax Act was issued on 27-07-2009. Responding to the said notice, assessee filed the return of income on 30-09-2010 (i.e. after 14 months) declaring the income of Rs.12,25,900/-. Otherwise, assessee filed the return of income for the A.Y. on 03-02-2004 originally u/s.139 of the Act declaring total income of Rs.4,15,800/-. The difference in the return of income of both the returns includes an additional income of Rs.8,10,000/- *suo moto* disclosed by the assessee in the return u/s.153A of the Act as 'income from other sources'. Further the Explanation 5A is brought into the statute originally w.e.f. 01-06-2007. As per the same, the non-filing of return of income before the date of search, attracts the penalty for concealment of income. As per the language used therein, the mere filing of return of income in time (with or without declaring the discovered item of income during search) provides immunity from the said penalty. Subsequently, the Explanation 5A was amended w.r.e.f. 01-06-2007 by the Finance (No.2) Act, 2009 and it became the Act on 13-08-2009.

The present appeal relates to the penalty u/s.271(1)(c) of the Act and the said penalty is directly relatable to the said additional income of Rs.8,10,000/-.

Background facts of this income includes that the assessee earned interest income from the deposits kept with the banks vide the bank accounts opened with 'M/s. The Shree Suvarna Sahakari Bank Ltd.' (A/c. Nos. 88 & 275). As per the assessee, the bank accounts were disclosed in the books of accounts and however, the deposits and interest income accrued on the deposits was not offered to tax in the original return of income filed by the assessee on 03-02-2004 (supra). The search did not yield any direct incriminating evidence. Assessee filed the return of income u/s.153A and disclosed the same in the return of income. According to the assessee, for penalty purpose, this interest income constitutes voluntary disclosed income of the assessee as the search action did not result in any seized papers unearthed by the Department to support the said deposits and the interest income receipts. The assessment was completed u/s.153A r.w.s. 143(3) of the Act on the returned income accepting the return of income without making any additions. Thus, the search assessment became final without any litigation. While making such assessment, the Assessing Officer gave the satisfaction for initiating the penalty proceedings by stating that the "*the assessee has concealed particulars of his income in the original return, penalty proceedings u/s.271 of the Act are initiated.*" Further, the AO vide his order dated 30-06-2011 levied the penalty of Rs.3,60,000/- @ 150% of the tax sought to be evaded on the said additional income of Rs 8.10 lakhs as per the discussion given in Para Nos. 16, 17 & 18 of the penalty order. While charging high rate of 150%, the AO mentioned that the "*concealment appears deliberate*". The CIT(A) confirmed the said penalty rejecting the various legal precedents relied upon by the assessee. However, the CIT(A) distinguished with the said judgments and justified the levy of penalty @ 150%. Aggrieved with the same, assessee is in appeal before us for the A.Y.2003-04.

BEFORE THE TRIBUNAL

Ld. Counsel for the Assessee and Ld. DR for the Revenue made various arguments and counter arguments on various legal and other issues and the same are detailed as follows.

Arguments by Ld. Counsel for the Assessee

9. Before us, Ld.Counsel for the assessee made various arguments against levy of the penalty and they include both legal and other than legal arguments. Ld. Counsel for the assessee also filed written submissions stating that the penalty is unsustainable both on law and as well as on facts. The argument based submissions are elaborated in the subsequent paragraphs of this order.

A. Non-abated /completes assessment – Sustainability of penalty linked to Additions of Rs 8.10 lakhs - Not based on any Incriminating material :

Elaborating the legal submissions, Ld Counsel for the assessee submitted that it is a case of closed assessment and therefore a 'non abated assessment' within the meaning of the 2nd proviso to section 153A of the Act. Explaining the relevant facts, Ld. Counsel mentioned that the assessee filed return of income for the A.Y. 2003-04 u/s.139 of the Act on 03-02-2004 declaring the total income of Rs.4,15,800/- and the assessment became final. As evident from the fact, no notice was issued by the Assessing Officer u/s.143(2) of the Act and the time for the issuance of the same expired long back. Relying on various decisions, the Ld. Counsel submitted that when the assessment became final and when there is no time left for issue of notice u/s.143(2) of the Act, such assessment, being abated, can only be reopened only when AO has any incriminating material seized during the search action on the assessee. On these facts, there is no

need for the assessee to disclose the additional income, if any, in the return of income filed by the assessee in response to notice u/s.153A of the Act. Nevertheless, assessee disclosed the same to clean his accounts voluntarily. According to Ld. Counsel for the assessee, such income does not attract penalty u/s.271(1)(c) of the Act.

Taking us through the various documents and the paper books filed before us, as well as assessment order, Ld Counsel submitted that the addition of Rs 8.10 lakhs was not supported by any incriminating material and stated that the said amount constitutes interest earned by the assessee from the banks on the deposits. Further, Ld. Counsel submitted that the Bank Accounts in question were already disclosed in the books of accounts of the assessee and they are not concealed Bank Accounts. In that case, there is no question of concealed income and it constitutes a case of omission, which should not attract the provisions of 271(1)(c) of the Act. Assessee, further, filed written submissions, putting forward various legal submissions in this regard. For the sake of completeness, we proceed to extract Para 3 to 3.3.

Assessee's submissions -making addition in Non-abated assessment :

"3. ***It was a closed assessment year.***

3.1 The regular return of income was filed on 03-02-2004 (2nd page of para 4 of the Assessment order) declaring income of Rs.4,15,800/-. As per section 153(1) of the I.T Act, the time for completing the regular assessment has expired on 31st December 2005. Assessment was not pending on the date of the search. The assessment has not abated. Thus it was a closed Assessment year.

3.2.1 When the time limit to complete the assessment has lapsed and no incriminating material was found during the search operation, the search assessment u/s. 153A is to made only as per the original assessment u/s.143(1) or u/s. 143(3) of the Act.

Om shakti Agencies Pvt. Ltd. 66 taxmann.com 287 (Chennai)
Yamini Agarwal 83 tammann.com 209 (Kolkata)

3.2.2 Completed assessment can be disturbed u/s. 153A of the Act only on the basis of incriminating material found during the course of the search.

Murli Agro Products 49 taxmann.com 172 (Bombay)
Continental Warehousing Corporation 374 ITR 645 (Bombay)
Al Cargo Global Logistics Ltd. 137 ITD 287 (Mumbai)

In the case of Budhiya Marketing Pvt. Ltd 154 ITD 650 (Kolkata) it has been held that in search assessments u/s.153A of the Act total income shall be determined; in respect of Assessment Years for which original assessments have already been completed on the date of search, by restricting additions only to those items which flow from incriminating material found during the course of the search.

In the case of Mridul Commodities Pvt. Ltd. 78 taxmann.com 337 (Kolkata) it has been held that where pursuant to notice issued under section 153A, assessee company filed its returns for relevant years, since assessment for said years had already completed and no incriminating material had been found in course of search proceedings, impugned addition made by Assessing Officer under section 68 in respect of share application money received from non-existent subscribers, was to be set aside.

3.2.3 Since the taxation of the amount of Rs.8,10,000/- u/s.153A of the Act itself does not have legal basis, the penalty u/s.271(1)(c) of the Act levied in respect of this amount is bad in law.

3.3 While dealing with this question the Hon'ble Pune Bench of the Tribunal in the case of a group concern Kakade Construction Company, ITA No.99/PN/2013 (PB,99) from para 5 to para 7 of the Order, while deciding the issue of penalty in respect of disallowance of deduction u/s.80IB (10) of the I.T Act for A.Y.2005-06 in assessment u/s.153A of the Act, has held that since the deduction was not disallowed on account of any material found during the course of the search, in view of the judgment of the Nagpur Bench of the Hon'ble Bombay High Court in the case of M/s. ***Murli Agro Products Ltd. 49 taxmann.com 172 (Bombay)*** *the initiation of proceedings u/s. 153A of the Act would not affect the assessment finalized prior to the date of the search. The Hon'ble Pune Bench of the Tribunal further held that the assessee can always argue his case afresh in the penalty proceedings on various issues which he had not argued during the quantum proceedings and that since the Assessing Officer could not have disturbed the assessment which was finalized before the date of the search the question of penalty does not arise."*

B. Voluntary Disclosure of Rs.8,10,000/- :

Further, Ld. Counsel for the assessee submitted the income of Rs.8,10,000/- is voluntarily declared by the assessee before any detection is done by the Department despite the action u/s.132 of the Act. Further, it is the case where there is no incriminating material found during search connecting to this item of income and the same is undisputed. Ld. Counsel for the assessee submitted that the assessee on his own, disclosed to come clean with reference to the cash deposits in the accounted bank accounts of the assessee with The Shree Suvarna Sahakari Bank Ltd. As such, no

discussion of any kind or no enquiry of any kind or no recording of any statement on oath of any kind by the Revenue on this income. Considering these facts, the offer of income becomes a voluntary act and the penalty is not leviable on such income.

C. Ambiguity in the mind of the AO with reference to the satisfaction at the time of initiating penalty proceedings – Limbs etc.

Ld. Counsel for the Assessee mentioned that the AO's failure to specify the satisfaction in an **unambiguous** expressions of the Act by specifying the **limb** of the clause (c) of section 271(1) of the Act, the penalty order becomes unsustainable in law. According to Ld. Counsel for the assessee, the AO's satisfaction invoking penalty proceedings suffers from 'ambiguity' in the mind of the AO. For this, he relied on various decisions to support his case. Justifying the same, Ld. Counsel find a written submissions on this issue and the contents of para 6.3.2 to 6.3.8 are relevant as it contains the facts of the present case and the legal proposition on the said subject. For the sake of completeness, said paras are extracted here as under:

> *"6.3.2 I respectfully submit that, while levying penalty u/s.271(1) (c) of the Income Tax Act the Assessing Officer has demonstrated complete non-application of mind and casualness.*
>
> *The Assessing Officer has used the words "deliberate", "concealed the income", "concealment penalty" etc. The word "deliberate" does not find place in section 271(1) (c) of the Act. Similarly the words "concealed the income" also do not find place in section 271(1) (c) of the Act.*
>
> *6.3.3 It is trite law that the Assessing Officer while levying penalty u/s. 271(1)(c) of the Act, has to seriously apply his mind on the question whether the particulars offence committed by the assessee falls under the charge "concealed the particulars of income" or under the charge "furnished inaccurate particulars of income". The Assessing Officer cannot adopt a casual approach in use of the words while levying penalty. The penalty has to be levied for the precise offence committed by the assessee.*
>
> *6.3.4 In the case of Sh. Kishory Mohan Bera Vs. the State of West Bengal, AIR 1972 SC 1749 the Hon'ble Supreme Court has vacated the detention order passed by the Distt. Magistrate of Hooghly district, because the Distt. Magistrate has not seriously applied his mind in choosing the particular offence for which he has passed the detention order. In para 5 of the*

judgment the Hon'ble Supreme Court has held that, if the power is excised on a ground not enumerated in the section or in respect of the offence which is not germane to any of the charges enumerated in the section, such excise of power would be beyond the jurisdiction of the Distt. Magistrate and therefore invalid.

In para 10 of the judgment the Hon'ble Supreme Court held that before the authority invokes its power, it must be satisfied and must expressly say in his order that alleged offence of the person concerned was such that it precisely fell in one of the charges enumerated in the section under which the order is passed. If it is not done and the language in which the order is passed demonstrates an element of casualness in making the order, the order cannot be upheld.

In para 11 of the judgment the Hon'ble Supreme Court has held that an extraneous ground on which the order is passed vitiates the order.

6.3.5 In para 8 of the judgment in the case of Smt. Kaushallya 75 Taxmann 549 (BOM) the Hon'ble Bombay High Court has held that all depends on; if the lapse on the part of the officer demonstrate non application of mind. The Hon'ble Jurisdictional High Court in para 10 of the judgment further held that use of the word "deliberately" which did not exist in section 271(1) (c) of the Act has invalidated the proceedings because it has demonstrated non-application of mind.

6.3.6 Similarly use of the words " that assessee is liable for levy of penalty for concealment" does not establish that the penalty has been levied for the charge/limb " concealed the particulars of income". A reference in this regards can be made to para 26 of the judgment of Hon'ble 'A' Bench of the Pune Tribunal in the case of Kanhaiyalal D. Jain ITA No.1201 to 1205/PN/2014, where in it has been held that the satisfaction recorded by the Assessing Officer against the assessee that "it is liable for levy of penalty for concealment" does not establish the case of the revenue as to for which particular limb the assessee is liable. i.e. whether it is for concealment of the particulars of income or for furnishing the inaccurate particulars of income.

Thus even the Hon'ble Pune Bench of the Tribunal is of the view that use of such words does not meet the requirement of section 271(1) (c) of the Act.

6.3.7 In view of the above discussion it is submitted that use of the loose words like "concealed the income", "concealment penalty" and "deliberate concealment" does not amount to levying the penalty for the charge/limb of "concealed the particulars of income". Moreover, use of these words which are extraneous to section 271(1) (c) of the Act shows casualness and non application of mind by the Assessing Officer, which has rendered the penalty order as invalid.

6.3.8. It is further submitted that once the Assessing Officer has displayed non-application of mind while levying the penalty, there is no question of trying to find out what was in the mind of the Assessing Officer while levying the penalty."

D. Ambiguity with reference to the satisfaction at the time of initiation – Limbs of the Explanation 5A etc.

Regarding the argument on the existence on the 'ambiguity', Ld. Counsel for the assessee submitted that the 'satisfaction of the AO' in the

assessment order does not refer to the Explanation 5A of the Act in general and the 'post-amended Explanation 5A', in particular. AO's mind is obviously full of confusion and ambiguity as there is no reference to limbs/charge whatsoever of the said Explanation 5A of section 271(1)(c) of the Act. Further, relying on the Coordinate Bench decision of Pune in the case of Kanhaiyalal D. Jain Vs. ACIT (ITA Nos. 1201 to 1205/PN/2014 dated 30-11-2016) he relied on the contents of Para 23 and 24 of the Tribunal's order. Ld. Counsel for the assessee submitted that the 'ambiguity' linked to the requirement of specifying the limbs even in cases of Explanation 5A will make the penalty proceedings illegal and therefore, the penalty orders become void.

E. Amended Explanation 5A vs Pre-amended Explanation 5A :

1. Further, the assessee raised another legal argument relating to inapplicability of amended Explanation-5A of section 271 (1)(c) Act to the facts of the present case. Explaining the provisions of the said Explanation to the case of the assessee, Ld. Counsel submitted that this is the case where assessee filed the return of income u/s.139 of the Act in normal course and therefore, the pre-amendment of Explanation 5, as it exists as at the relevant point of time, should apply to the present case. In that case, as per the pre-amended Explanation 5A, assessee needs to fulfil the requirement of filing of return of income u/s.139 of the Act in order to escape the rigours of the penalty. Referring to the amendments made to the said Explanation 5A with retrospective effect from 01.06.2007 by the Finance (No. 2) Act 2009, Ld. Counsel submitted that, although it is unsustainable, the said amended Explanation-5A is now made applicable retrospectively even to those cases where return of income was already filed before the search was conducted. The disclosure of the discovered income

in search action if any is the essential condition for fulfillment if assessee wants to escape the rigours of section 271(1)(c) of the Act. He brought our attention to various favourable decisions to support the interpretation in favour of the Assessee.

2. **Retrospectivity of Amended Explanation 5A - Violation of Article 20 of the Constitution of India:**

Questioning the correctness of such retrospective amendment, Ld Counsel submitted that applying the said amended Explanation 5A retrospectively will tantamount to the violation of Article 20 of the Constitution of India.

According to the said Article 20, "*no person shall be affected of any offence except in the violation of law enforce at the time of the commission of the Act charge as an offence, nor be subjected to a penalty greater than that which might have been invoked under the law in force at the time the commission of the offence.*" The fact of upholding the said Article 20 of the Constitution of India by the Supreme Court in the case of M/s. Star India (Private) Limited - 280 ITR 321 and jurisdiction High Court judgment in the case of J.S.W Energy Limited 16 Taxmann.com 303 was brought to our notice. According to the Ld.AR, the judgment in the case of M/s Star India Private Limited (supra) was delivered in the context of liability of payment of service tax by retrospective amendment whereby the broadcasting companies are required to pay the Service Tax retrospectively. Further, the judgment of jurisdictional High Court in the case of J. S.W. Energy Limited (supra) was delivered in the context of applicability of provisions of section 234B of the Act to the MAT companies. These judgments were decided in favour of the taxpayers. However, no direct judgment from the higher judiciary was brought to our notice involving the amendment to

Explanation-5A to section 271(1)(c) of the Act and in favour of the assessee's contention.

Retrospectivity not Approved - latest decisions of Tribunal:

3. However, bringing our attention to Pune Bench decisions available in the public domain i.e. the case of M/s Chhoriya Land Developers and Construction Company, in ITA No.1389 & 1390/PUN/2012 and order in the case of ***Rajneesh Vohra*** Vs. DCIT in ITA No.516/Chandigarh/2012, Ld. Counsel submitted that in the case of Rajneesh Ora (supra), where the facts includes that the AO applied the unamended Explanation-5A and the CIT(A) applied the amended Explanation-5A, the Tribunal held that the amended Explanation 5A apply to that assessee. Therefore, as per Ld AR, this case is distinguishable on facts and the issue. On these facts, the Hon'ble Tribunal held that the powers of the CIT(A) are co-terminus with that of the AO and the CIT(A) is competent to apply the amended Explanation-5A. Keeping the issue on retrospectively of the amendment open, the Tribunal further held the retrospectivity of the amended Explanation-A cannot be adjudicated at the level of the Tribunal as it falls in the original jurisdiction of the competent Hon'ble High Courts and Supreme Court. Further referring to the another order of the Tribunal in the case of ***Chhoriya Land Developers and Construction Company*** (supra), Ld. Counsel for the assessee submitted that the facts of that case are also distinguishable. Applicability of Apex court's judgment in the case of Brij Mohan (supra) is the core is and Tribunal decided against the Assessee and confirmed Penalty in this case. Ld AR for Assessee is critical of this decision as it never dealt with the aforementioned Article 20 or the decisions of the High court.

4. Further, to support his case and also referring the decisions of the Hyderabad & Vishakhapatnam Bench of the Tribunal in cases of ***Nukala Ramakrishna*** (382/Vizag/2014 dt 16/9/2016) and ***Dhanekula Rama Rao*** (supra), Ld. Counsel submitted that these decisions are relevant for the following conclusions namely,- (1). Amended Explanation 5A does not apply across all cases where search is initiated after 1/7/2007 and before 13/8/2009 (dt of the assent); (2). Retrospectivity is not approved in view of Article 20 and other judgmental law; (3). The event of filing the return of income u/s 139(1) of the Act prior to the initiation of search provides immunity; (4). The law as exists at the date of search action applies and therefore, the pre-amended Explanation 5A is applicable to the case on hand. Further, on the issue of judicial discipline, Ld Counsel relied heavily on the ratio laid down on the Apex court's judgment in case of Vegetable Products 188 ITR 192 . Further, he also brought our attention to the recent decision of the Mumbai Bench dt 03-01-2018 in the group cases of Reliance Communication Ltd (4672/M/2017 & others) for the proposition that failure to follow an existing favourable decision of the Tribunal amounts to violating the said Apex court's judgment.

F. To sum up, it is the argument on Ld. Counsel for Assessee that the amended Explanation-5A to section 271(1)(c) will not apply retrospectively to all the cases where the events of (a) the initiation of search happened prior to the amendment to the said Explanation 5A; or (b) the filing of the return of income originally u/s 139 (1) of the Act happened prior to the amendment to the said Explanation 5A ; (c) filing of returns u/s 153A of the Act became due prior to the amendment to the said Explanation 5A; (d) in principle, the rigour of the amended Explanation 5A is already read down by the subsequent decisions of the Tribunal by not applying them to all the

cases of initiation of searches after 1.7.2007 etc. (e) the principles of natural justice qua adverse effects of retrospective amendments are considered upheld. (f)Apex court's judgment in case of Vegetable Products 188 ITR 192 and the recent decision of the Mumbai Bench dt 3/1/2018 in the group cases of Reliance Communication Ltd (supra) helps the Assessee.

G. Penalty @150% :

Further, referring to the higher rate of 150% as applied by the AO in levying the penalty, Ld. Counsel submitted that it is not a fit case for levy of penalty at such a high rate of 150%. Giving the justification, Ld. Counsel for the assessee submitted that the assessee in effect complied strictly with the disclosure of Rs.40 crores, made the payment of taxes as per the provisions of the Act, etc. The fact of personal problems together with requirement of attending to various procedures with regard to the maintenance of books of accounts led to the delay in payment of taxes. Ld. Counsel for the assessee also mentioned that the total demand raised on the assessee works out to around 18.06 crores and against this, assessee already paid total amount of Rs.18.30 crores i.e. more than the demand raised by the AO. Assessee made the entire payment by 25-10-2011. Therefore, there is no default on part of the assessee in paying taxes. Referring to the retraction of the disclosure, Ld. Counsel for the assessee submitted that ultimately, the assessee filed the return of income declaring the additional income and paid the taxes by 25-10-2011. Relying on the order of the Tribunal, Chennai Bench in the case of A.N.Annamalai Swamy, HUF 35 CCH 305, Ld. Counsel submitted that the penalty is not leviable u/s.271(1)(c) of the Act when the assessee filed revised returns before completion of assessment in which additional income was disclosed during the search. Ld. Counsel prayed for deleting the penalty.

Arguments by Ld. Departmental Representative for the Revenue

10**A.** Ld. DR for the Revenue narrated the fact of disclosure of Rs. 40 crores, subsequent retractions, assessee's failure to pay the tax within the time frame given by the assessee during the search action etc. Referring to the argument relating to the non-abated assessment (no addition can be made by the AO in case of a non-abated assessment except with the basis of incriminating material seized during the search action), Ld.DR for the Revenue submitted that the notice issued by the AO u/s.153A of the Act relates to search and seizure provisions. Therefore, the undisclosed income declared by the assessee in the said returns constitutes unexplained income of the assessee. For this, there is no requirement of incriminating material. Thus, since the additional income offered in the return of income u/s.153A of the Act by the assessee is more than the income disclosed by the assessee in the original return of income filed u/s.139 of the Act, the same constitutes a concealed income attracting the provisions u/s.271(1)(c) of the Act.

B. The returned income u/s.153A of the Act cannot be described as voluntary act as the return is filed after search action u/s.132 of the Act. The offer of cash deposits and the interest accruals are not to be construed as superfluous income without any legal basis.

C. Referring to the argument relating to the ambiguity in the mind of AO that reference to 1) satisfaction of AO at the time of initiation of time of penalty and 2) the fact of mentioning the appropriate limb even when Explanation-5A to section 271(1)(c) is invoked, Ld.DR for the Revenue submitted that AO has given satisfaction at the time of initiation as a case of 'concealment in particulars of income'. Ld. DR for the Revenue admitted

that the satisfaction is not mentioned in the exact expressions as specified in the relevant provisions of the 271(1)(c) of Act.

D. Referring to the applicability of the amended Explanation-5A of the 271(1)(c) to the present case where search was initiated on 11-02-2009 and the return of income was filed u/s.139 of the Act before the said search was initiated, Ld.DR submitted that mere filing return of income in normal course does not grant immunity to the assessee from the penalty when the said additional income was not declared originally in the return of income filed u/s.139 of the Act. Ld. DR fairly submitted that, though it is in different context, the amendment to the Explanation 5A are held to be retrospective and clarificatory in nature. For this proposition, Ld.DR relied heavily on the decision of CIT(A) in the case **Rajneesh Vohra** and the Pune Bench decision in the case of **M/s Chhoriya Land Developers and Construction Company (supra).**

Referring to the afore-mentioned latest decisions of Vizag bench in the cases of Nukala Rama Rao (supra) and Dhanikula Rama rao (supra), Ld DR submitted that these judgments are distinguishable on facts. In these cases, the Returns of income u/s 153A of the Act were filed before the amendments were made to said Explanation 5A. Further, the Assessees under consideration were not comparable in matters of compliance to the departmental proceedings, filing of returns of income u/s 153A of the Act and the payment of relevant taxes on the disclosed sum of additional concealed income of Rs 40 crores. Ld DR prayed for confirming the penalty levied by the AO.

DECISION OF THE TRIBUNAL ON LEGAL ISSUES

11. We heard both the parties and examined the facts of the present case as well as the various decisions cited by both the parties on the issue of levy of penalty for the A.Y. 2003-04 in respect of additional income of Rs.8,10,000/- suo moto disclosed by the assessee in the return of income filed in response to section 153A of the Act. There are various aspects which are required to be attended by us and the list include : (a). *Non-abated (completed) assessment or not; (b). Fate of additions made in the Non-abated (completed) assessment qua the existence of any incriminating material; (c) Ambiguity in the mind of the AO - all AYs; (d) Pre-amended Explanation 5A Vs. Post-amended Explanation 5A to section 271(1)(c) of the Act – Specifying the limb at the time of initiation of penalty proceedings.*

We shall take up each of the issues and the issue-wise elaboration is discussed in the succeeding paragraphs of this composite order.

A. Non-abated (completed) Assessment or Not : Assessee filed the return of income u/s.139 of the Act for the A.Y. 2003-04 on 03-02-2003. There is no information regarding the completion of the assessment u/s.143(3) of the Act. Ld. DR also could not demonstrate that there was scrutiny u/s.143(3) of the Act. Considering the fact that return was filed in the year 2004 it is an obvious inference that time for issue of statutory notice u/s.143(2) of the Act expired long back. When the time for issue of notice u/s.143(2) has expired, the same constitutes a 'non-abated assessment' within the meaning of the provisions of the 2nd proviso to section 153A of the Act. The decisions in the case of Om Shakti Agencies Pvt. Ltd. 66 taxmann.com 287 (Chennai) and in the case of Yamini Agarwal 83 taxmann.com 209 (Kolkata) are relevant in this regard. **Therefore, in**

our view, the assessment constitutes a non-abated assessment and consequently, the additions, if any, to be made under the assessment u/s.143 r.w.s. 153A of the Act have to be done only based on the incriminating documents found during the search and seizure action u/s.132 of the Act. This is the settled legal position as the judgmental law stands today.

B. The fate of additions made in the Non-abated (completed) Assessment qua the existence of any incriminating material linked to the additional income of Rs.8.10 lakhs declared by the assessee in the return filed in response to section 153A of the Act.

The relevant facts include that the assessee deposited amounts in Bank Account Nos. 88 and 275 maintained with 'The Shree Suvarna Sahakari Bank Ltd.'. These accounts are declared in the financial statements originally maintained by the assessee. AO did not dispute the same. The cash deposits and the interest income accrued to the assessee on the said deposits was not offered to tax in the return of income filed u/s.139 of the Act. On finding the said omission, the assessee made use of the notice u/s.153A of the Act and offered the interest income of Rs.8,10,000/- to tax through the return filed u/s.153A of the Act. As such, the bank pass book is not the books of accounts of the assessee. Otherwise, the Revenue has not discovered any incriminating information directly or indirectly linked to the said Rs.8,10,000/-. As such, there is reference to the transactions in the Questions and Answers in the statements too, recorded during the search and seizure proceedings. It is purely the decision of the assessee to offer the said income voluntarily to come clean on the issue of undisclosed income for the assessment years. For all these arguments, Ld. Counsel for the assessee relied on the binding

judgment in the case of Murli Agro Products reported in 49 taxdmann.com 173, M/s Continental Warehousing Corporation reported in 374 ITR 645 (Bombay) and M/s All Cargo Global Logistics Ltd. reported in 137 ITD 287 etc.

Further, As per the Ld. Counsel, the taxation of such income of Rs.8,10,000/- which constitutes superfluous one u/s.153A of the Act, the same constitutes taxation of income without any legal basis and therefore, the penalty relatable to such income has no legal stand to survive.

We have so far discussed the facts relating to the arguments relating to (1) non-abated assessment qua no incriminating material and (2) superfluous income does not attract levy of penalty. After hearing both the parties on this issue of interest income, we are of the opinion that the assessment for the A.Y. 2013-14 certainly constitutes a non-abated assessment and there are no two views on this issue. We have no doubt on this aspect. Having held so, the taxation income of Rs.8,10,000/- is not attributable to the any particular material information found during the search action. Further, we find mere happening of the search action does not imply discovery of any incriminating material or information on this income of Rs.8,10,000/-. These are the penalty proceedings and they are to be finalised independent of the assessment proceedings. **Thus, legally speaking, the addition of Rs.8,10,000/- is not otherwise sustainable in this non-abated assessment for A.Y. 2003-04 but for the concessions made by the assessee.** Considering the otherwise unsustainable nature of the addition, we are of the opinion, **the penalty is not sustainable for this assessment year on the addition of Rs.8,10,000/-.** Accordingly, relevant arguments of the assessee's counsel are allowed.

C. Ambiguity linked to the Limbs of Explanation 5A / Clause (c) of section 271(1) of Act & for all AYs upto 2008-09 :

Further, on the issue relating to allegation of 'ambiguity' in the mind of the AO, we examined the facts from the Assessment and Penalty orders of the AO. Further, from the Assessment order, we find the AO initiated the penalty in the A.Y. 2003-04 stating the following in Para 6 of the Assessment order :

Extracts from the Assessment order : (para 6)

"6. . . . .the assessee had concealed particulars of this income in the original return, penalty proceedings u/s.271(1)(c) of the Income Tax Act are initiated."

Extracts from Penalty order : (Para Nos. 16, 17 & 18) :

"16. Even under these circumstances the assessee claims that there is no concealment on his part and penalty u/s.271(1)(c) cannot be levied in his case. In case penalty u/s.271(1)(c) cannot be levied, penalty u/s. 271(1)(c) may not be leviable in any other case. This I think may not be intention of legislature. Intention of legislature in this regard is clear from explanation (5A) to section 271(1)(c).

17. From the facts of the case brought out above is a fittest case for levy of penalty u/s. 271(1)(c). Under these circumstances, I treat the assessee in default u/s. 271(1)(c) of the Income tax Act.

18. . . . . Besides this, the concealment appears deliberate. Therefore, it is not at all a fit case for levy of minimum penalty. The facts of the case calls for a stiffer penalty than the minimum specified in the Act. Taking into consideration the facts brought out above and the seriousness of the offence as narrated above, I am of the view that levy of penalty @150% of the tax sought to be evaded may be proper and just. Accordingly, I levy a penalty of Rs.3,60,000/- which is @150 of tax sought to have been evaded which I feel would meet the ends of justice."

For the sake of completeness of this composite order for A.Y. 2003-04 to 2008-09, we compiled in tabular form here the 'ambiguity' linked to the quality of 'satisfaction' for all the six assessment years :

A.Y.	***Assessment Order***	***Penalty order***
2003-04	*As the assessee had concealed particulars of this income in the original return, penalty u/s.271(1)(c) of the Income Tax Act are initiated*	*16. Even under these circumstances ..... In case penalty u/s.271(1)(c) cannot be levied in this case, penalty u/s.271(1)(c) may not be leviable in any other case. This I think may not be intention of legislature. Intention of legislature in this regard is clear from explanation (5A) to section 271(1)(c).* *17. From the facts of the case brought out above is a fittest case for levy of penalty u/s.271(1)(c). Under these circumstances, I treat the assessee in default u/s.271(1)(c) of the Income tax Act* *18. . . . . .Besides this, the concealment appears deliberate. Therefore, it is not at all a fit case for levy of minimum penalty.. . . . . ."*
2004-05	*The assessee has shown this income as additional income in the returns filed u/s.153A. As the assessee had concealed particulars of this income in the original return, penalty proceedings u/s.271(1)© of the Income Tax Act are initiated*	*14. . . . . However, the fact that there was a deliberate concealment of income or furnishing inaccurate particulars of such income on the part of the assessee is apparent.* ***Para 15 –do-*** ***Para 16 –do-*** ***Para 17 –do-***
2005-06	*As the assessee had concealed particulars of this income in the original return, penalty u/s.271(1)(c) of the Income Tax Act are initiated*	***Para 16 –do-*** ***Para 17 –do-*** ***Para 18 –do-***
2006-07	*The assessee has shown this income as additional income in the returns filed u/s.153A. As the assessee had concealed particulars of this income in the original return, penalty proceedings u/s.271(1)© of the Income Tax Act are initiated*	***Para 16 –do-*** ***Para 17 –do-*** ***Para 18 –do-***
2007-08	*-do-*	***Para 16 to Para 18***
2008-09	*As the assessee had concealed particulars of this income in the original return, penalty u/s.271(1)(c) of the Income Tax Act are initiated.*	*Para 13. As far as the contention that no penalty u/s.271(1)(c) can be levied as the assessee has not filed original return of income is concerned, the same cannot be accepted in view of explanation (5A) to section 271(1)(c) of I.T. Act, 1961.* *..... Intention of legislature in this regard is clear from explanation (5A) to section 271(1)(c).* *Para 14. From the facts of the case brought out above is a fittest case for levy of penalty u/s.271(1)(c). . . . . .* *Para 15. Under these circumstances, I treat the assessee in default u/s.271(1)(c) of the Income Tax Act. . . . . .*

From the above, the 'ambiguity' in the mind of the AO at the time of initiation was alleged by the Assessee. According to Assessee, the following deficiencies leading to the creation of ambiguity in the mind of AO are enlist,- (a) in the assessment order, AO did not refer to any Explanation 5A of the two Finance Acts i.e. pre or post amendment. He merely referred to the 'concealed particulars of this income in the 'original return'. This reference is made in general context and not in the context of clause (c) or Explanation 5A of section 271(1) of the Act. (b) AO made reference to "original return".

On considering the above list of items, we find that the same constitutes the outcome of the microscopic and hyper technical approach of the Assessee. In our view, the AO rightly used the legal expressions such as *'concealment of particulars of income'* which reflects the intention of the AO and the same is with reference to the limb relating to the concealment of particulars of income. We also find from the AO and the PO that the AO eventually levied penalty for the same limb of concealment of particulars of income. This is the pattern in all the nine assessment years under consideration. Therefore, it is a settled legal proposition that the allegation of ambiguity is unsustainable on the strength of the aforementioned facts. Therefore, we dismiss the arguments of the Assessee's AR. Accordingly, the grounds/additional grounds raised by the assessee are **dismissed**.

D. Pre-amended Explanation 5A Vs. Post-amended Explanation 5A to section 271(1) of the Act – Specifying the limb at the time of initiation of penalty proceedings – Ambiguity in the mind of the AO.

We shall now take up the arguments relating to the applicability of amended Explanation 5A to section 271(1) of the Act with restrospectivity. Relevant facts include that (1) the assessment years involved are

A.Yrs.2003-04 to 2008-09 (2) Date of search is 11-02-2009. All the original returns were filed before the due date specified u/s.139 of the Act and also before the date of search. Returns u/s 153A of the Act were filed on 30-09-2010 in response to notices u/s 153A dated 27-07-2009.

Background of Explanation 5A: The Explanation 5A to section 271(1) of the Act was originally inserted by the Finance Act, 2007 w.e.f. 01-06-2007. As per the same, the non-filing of return of income before the date of search, attracts the penalty for concealment of income. As per the language used therein, the mere filing of return of income in time (with or without declaring the discovered item of income during search) provides immunity from the said penalty.

The said Explanation 5A was amended w.r.e.f. 01-06-2007 by the Finance (No.2) Act, 2009. Therefore, as per the amended Explanation 5A to section 271(1) of the Act, mere filing the return of income does not provide immunity from penalty unless the item of income discovered during the search action is duly declared in the said return of income. Accordingly, when the same is not declared in the return of income filed u/s.139 of the Act filed before the search, the said item of income shall be deemed either as the '*concealment of particulars of income or the case of furnishing of inaccurate particulars of such income', as the case may be.* The Pre and post amended Explanation 5A contains reference to both the limbs common to the limbs specified in clause (c) of section 271(1) of the Act.

Assessee's case – Pre-amended Explanation applies :

Justifying the application of Pre-amended Explanation 5A to his case, the assessee claims that the provisions of **pre**-amended Explanation 5A to

section 271(1) of the Act apply to the facts of the case as the same was existing (1) at the time of filing the return of income u/s.139 of the Act; (2) the amended Explanation 5A became law only after the initiation of search on 11-2-2009; (3) the return of income filed u/s.153A of the Act relates to the search held on 11-02-2009, i.e. search initiated in the period post 01-06-2007 (3) amended Explanation 5A with retrospective application to this AY adds more troubles to the taxpayer and the same against the principles of natural justice on one side and the provisions of the Article 20 of the Constitution of India as well as the other binding judgments in force.

Revenue's case: Per Contra, Ld DR submitted that the retrospective amendment to Explanation 5A to section 271(1) of the Act is clarificatory. Without conceding to the fact of AO's failure to refer to the Explanation 5A, amended Explanation, limbs etc in the AO, Ld. DR for the Revenue submitted that the penalty levied in all the assessment years under consideration are required to be confirmed. In this regard, Ld. DR submitted that, on similar facts, the Pune Bench confirmed the penalty in the case of M/s Chhoriya Land Developers and Construction Company (supra).

12. In the paragraphs above, we discussed the facts, arguments and the counter arguments and views of the rival parties, various case laws etc on the issue of retrospective application of the amended Explanation 5A. We shall give our decision on the issues raised by the parties.

(1) On the **Retrospective Law of Explanation 5A:** the Assessee relies on orders of the Tribunal in the case of ***Nukala Ramakrishna (supra) where Dhanekula Rama Rao*** case, supra apart from many others against the retrospective interpretation. Per Contra, Ld. DR rely on the coordinate

bench decision in the case of Chhoriya Land Developers and Construction Company (supra) which is favour of the retrospective application of the amended Explanation 5A of the Act.

The operational paras from the order of the Tribunal in case of Nukala Ramakrishna (supra) read as under :

> *"16. . . . . .A similar issue has been come up before this bench, in the case of* ***Dhanekula Rama Rao Vs. DCIT central circle, in ITA No.665 to 669 of 2013.*** *The coordinate bench of this Tribunal, after considering the provisions of section 271 (1)(c) of the Act, Explanation 5A prior to the amendment and amended provisions Explanation 5A by the Finance Act, 2009, held that the* ***provisions of Explanation 5A as it stood as on the date of search*** *or* ***filing return of income in response to notice u/s 153A of the Act i****s applicable for levy of penalty, ...*
> *. . . . . .*
>
> *13. Considering all these aspects and the fact that the assessee has a good case on merits and* ***that the provisions of Explanation 5A are not applicable on the date of filing of the original return,*** *we are of the opinion that Explanation 5A* ***as it stood on the date of filing the return in response to notice under S.153A by the assessee*** *would not cover the case of the assessee, so as to warrant levy penalty under S.271(1)(c). Since the* ***assessee bonafidely declared the additional income in the course of search and filed return and paid taxes thereon, we are of the opinion that penalty levied on such amount cannot be sustained.*** *Accordingly, we allow the appeal of the assessee and delete the penalty of Rs.12,84,177 sustained by the CIT(A)."....."*
>
> *17.. . . . . Therefore, we are of the view that the amended provisions of explanation 5A of section 271(1)(c) of the Act is not applicable in the instant case. Accordingly, we direct the A.O. to delete the penalty levied u/s.271(1)(c) of the Act, for the assessment year 2005-06, 2006-07 & 2007-08."*

The operational Para No. 10 in favour of the Revenue from the decision of the Tribunal in the case of **Chhoriya Land Developers and Construction Company (supra)** is extracted as under:-

> *"10. . . . . In Other words, Explanation 5A is available to the Assessing Officer in all cases, where a search has been initiated u/s 132 of the Act on or after the 1st day of June, 2007, and it is wrong on the part of the respondent-assessee to canvass that it is Explanation 5 and not Explanation 5A which would apply to years for which assessee has filed returns u/s 139 of the Act prior to the search and before 01.06.2007. We have also perused the judgment of the Hon'ble Supreme Court in the case of Brij Mohan (supra) which has been relied upon by the assessee for the proposition that for levying penalty for concealment, it is the law in force on the date of filing of return u/s 139 of the Act, which is relevant and not*

Explanation 5A, which was not on the statute as on the date of filing of return u/s 139 of the Act before the date of search.. . . . . .The plea of the assessee was that the penalty was liable to be considered on the basis of the law as it stood during the assessment year relevant to the previous year in which the income was earned, which was prior to coming into force of the amended clause (iii) to section 271(1) inserted by the Finance Act, 1968. . . . . In our considered opinion, the aforesaid judgment of the Hon'ble Supreme Court cannot be straightaway applied in the present case to say that the law as on the date of the filing of return u/s 139 of the Act before the date of search is to be applied. ***The unambiguous phraseology of the Explanation 5A, which we have already elucidated earlier, clearly makes out that the legislative intent depicts that Explanation 5A is applicable where a search has been initiated u/s 132 of the Act on or after 01.06.2007 and it covers (a) any precious year which has ended before the date of search*** *and where the return of income for such previous year has been furnished before the said date but such income has not been declared; and, (b) any previous year whose due date of filing of the return of income has expired but assessee has not filed the return till the date of search, if other conditions prescribed therein are satisfied. Therefore, the aforesaid plea of the assessee, in our view, does not merit indulgence and is rejected accordingly.*

(2). TWO views on Retrospectivity of Explanation 5A : we have considered both views on the issue and analyses the relevant facts which led the Tribunal Benches to the said views. While the Pune Bench took the *strict interpretation* of amended Explanation 5A, per contra, the Vizag Bench took the line in favour of *liberal interpretation* of the said provisions, i.e. in favour of prospective application of The amended Explanation 5A of the Act with conditions attached. Therefore, in our view, it is not correct to say if there exists divergent view on retrospectivity on common facts. The conditions set by the Tribunal - Vizag bench include the ***date of search*** *or date of* ***filing return of income in response to notice u/s 153A of the Act.*** If the date of both events of search and filing of return u/s.153A of the Act are prior to the date of amendment to Explanation 5A to section 271(1)(c) of the Act the amended provisions apply prospectively only. In fact, Tribunal reiterated the position that date of filing of returns u/s 153A of the Act becomes a relevant event as the concealment of income is always with reference to the returns of income. From that point of view, linked to the facts, in our view, it is not the case existence of divergent views. Therefore,

the arguments of the Ld AR for the Assessee relying on the judgments in cases of Vegetable Products (supra) and Reliance Communication Ltd (supra) are unsustainable. In the instant case, the assessee filed the returns in response to notice u/s.153A of the Act much after the amendment by the Finance Act (No.2), 2009 is brought into the statute. Hence, the decision of the Tribunal – Vizag Bench does not help the assessee.

Therefore, we are of the view that decision of the coordinate bench of Pune Bench of the Tribunal becomes binding on us and the same in favour of retrospective interpretation. Relevant paragraphs are already extracted in the preceding paragraphs of this order. Accordingly, we hold the legal issues raised in the grounds/additional grounds have to be decided against the Assessee and they stand **dismissed**.

MERITS LINKED GROUNDS FOR AY 2003-04

13. We shall now take up the grounds pertaining to the merits of levy of penalty on the additional income of Rs 8.10 lakhs relating to bank deposits and interest accrued thereon s*uo motto* offered by the Assessee in the AY 2003-04.

In the preceding paragraphs of this order, on this issue, we have concluded that it is case of 'non abated assessment' and addition if any made by the AO on account of deposit and interest becomes unsustainable as they are never to be done on the strength of the incriminating material. Further we have held that the said sum of Rs 8.10 lakhs constitutes offer of income using the opportunity of proceedings u/s 153A of the Act despite non- discovery of any incriminating materials during the search action on

the Assessee. From that point of view, the same additional income if AO were to make in assessment, the same needs to be deleted. Consequently, the penalty levied on the said sum of Rs.8,10,000/- by the AO becomes unsustainable too. Hence, on merits too, the penalty requires to be **deleted**.

In the result, the appeal of assessee for A.Y. 2003-04 is partly allowed.

We shall now take up the legal and merits linked issues pertaining to AY 2004-05

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14. Assessee raised various grounds in appeal memo. Further, assessee various legal additional grounds in three instalments. Both the parties submitted that they are similar to the ones relatable to AY 2003-04. This appeal emanates from the non-abated assessment. It is their submission that the facts being similar, the arguments are commonly applicable to this AY too.

On considering the same, (1) legal issues (i.e. ambiguity issues, satisfaction issue and the retrospectivity of the amended Explanation 5A of section 271(1)(c) of the Act), we find the conclusions drawn by us apply to this A.Y. 2004-05 with equal force. We direct the AO accordingly. In effect, none of the arguments of Ld. Counsel on these legal issues survives. Accordingly, relevant additional grounds relating to the legal issues stand **dismissed**.

(2) On the merits linked issues, we find penalty is levied on two additions, i.e. the addition of Rs.45,27,817/- on account of bank deposits and the interest thereon and the negative cash balance of Rs.25 lakhs. Regarding the first addition as held by us, it is a case of additional income offered suo motu by the assessee in the return of income without support of any incriminating material. Therefore, like in the A.Y. 2003-04, we find for the same reasons narrated in the relevant appeal, we direct the AO to delete the penalty. Assessee thus gets relief.

Regarding the penalty levied on the said sum of Rs.25 lakhs of additional income on account of negative cash balance, we find that the source of this discrepancy is faulty cash book seized by the Department during the search and seizure action u/s.132 of the Act. Therefore, the addition of Rs.25 lakhs and other similar additional income is attributable undisputedly to the discoveries of the search action. Therefore, we hold the AO is justified in levying the penalty u/s.271(1)(c) r.w. Explanation 5A of the Act. The judgment of Supreme Court in the case of Prasanna Dugar Vs. CIT supports our view. Accordingly, relevant penalty is confirmed. AO is directed to work out the penalty as per the discussion above. Accordingly, relevant grounds on merits are partly allowed and the additional ground on legal issues are dismissed.

In the result, the appeal of the Assessee is partly allowed.

ITA Nos.14 to 17/PUN/2013 - A.Yrs. 2005-06 to 2008-09
Sri Sanjay D. Kakade

15. Before us, Ld. Counsel for the assessee submitted that these are the years of Abated assessments and the additions are allowed to be made with or without the strength of the incriminating documents in such

assessments. Further, Ld. Counsel for the assessee brought our attention to the grounds filed by the assessee for the said assessment years and compared the same with that of the grounds/additional grounds raised for the A.Y. 2003-04 and mentioned that the additional grounds are identical on **legal issues**.

LEGAL ISSUES

Before us, on the legal issues raised in the said additional grounds, both the parties submitted that the legal issues are similar to the ones relatable to AY 2003-04. It is their submission that the facts being broadly similar, the arguments are commonly applicable to this AY too. Further, Ld. Counsel submitted that the conclusion drawn by the Tribunal for A.Y. 2003-04 apply to these years under consideration. On hearing them and also considering the commonality of the issues, we are of the opinion that our adjudication given in the preceding paragraphs of this order for the A.Y. 2003-04 becomes applicable to the A.Yrs. 2005-06 to 2007-08 *mutatis mutandis*. Accordingly, the legal and additional grounds grounds raised by the assessee in the above assessment years are **dismissed** as in the appeal for A.Y. 2003-04 and 2004-05 above.

MERIT LINKED ISSUES

16. Before us, Ld. Counsel for the assessee summarized the additions on which the penalties u/s.271(1)(c) of the Act are levied in the case of Sri Sanjay D. Kakade. They are extracted here as under :

Penalties levied in the case of Sri Sanjay D. Kakade :

Sr. No.	Particulars	AY 2003-04	AY 2004-05	AY 2005-06	AY 2006-07	AY 2007-08	AY 2008-09
1	Deposits in Banks	8,10,000	45,27,817 (Including interest 38,317)	27,76,510	29,43,867	42,86,000	1,27,440 (Including interest 19,540)

2	Negative cash	-	25,00,000	2,44,00,000	7,20,00,000	5,36,00,000	-
3	Supervision charges	-	-	-	7,17,000	-	-
4	Amount disclosed as negative cash in M/s. Kakade Jewellers (Firm)	-	-	-	-	-	5,00,000

The AO levied the penalties u/s.271(1)(c) of the Act for all the 6 assessment years in the case of Sri Sanjay D. Kakade from A.Y. 2003-04 to 2008-09. Details of additions are provided in the above table. As seen from the above table, there are four kinds of additions made by the AO in the assessments which attracted penalty proceedings which includes (1) the addition on account of deposits in the banks (2) addition on account of negative cash (3) addition on account of transportation charges and finally (4) addition on account of negative cash of in the name of firm, M/s. Kakade Jewellers owned up by the assessee individually.

We shall take up each of these additions in the following paragraphs.

17. Regarding the deposits in the banks, background details were already discussed in the preceding paragraphs of this order. In brief, the facts are that assessee owns deposits in the bank accounts and the same were not detected by the Department during search action on the assessee. No incriminating evidences were also made out by the Revenue. As such, no seized paper was referred to in the orders of the assessment as well as the penalty orders. In filing returns, in response to notice u/s.153A of the Act, assessee made use of the same, to come out clean of all the discrepancies in the accounts, assessee came forward and *suo motu* offered these deposits along with interest in the banks for all the 5 assessment years. Thus, it is the case of the assessee before us before the assessee's voluntary disclosure of income the Revenue would not have added these deposits as income of

the assessee. To that extent, the same does not constitute concealed income attracting the provisions of section 271(1)(c) of the Act r.w. Explanation 5A of the said section. Thus, on the ground of voluntary offering, the assessee desires deletion of penalty on these additions.

Per Contra, Ld. DR for the Revenue submitted that the deposits are found in the bank account of the assessee which were of course disclosed bank accounts. Nevertheless, this income in all the 5 years are attributable to the discoveries made by the Department during the search and seizure action. From this point of view, the income on account of deposits in bank and interest thereon constitutes the concealed income and the penalty is validly levied on the same. He also relied on various decisions to support the contention that in cases of search and seizure action, there is voluntary offer of income (brought to tax u/s.153A of the Act) and all the additional income constitutes 'concluded income' attracting the penal provisions of section 271(1)(c) of the Act.

18. We heard both the parties on this issue and levy of penalty on the income by way of deposits in the bank and interest thereon and find that the additions made in all the 5 assessment years from A.Y. 2003-04 to 2008-09 requires to be decided in the following lines.

So far as the addition for A.Y. 2003-04 (Rs.8,10,000/-), A.Y. 2004-05 (R.45,27,817 – including interest segment of Rs.38,317), we have already held that these are the closed assessments (Non-abated assessments) and the additions, if any, has to be made strictly based on the incriminating evidences discovered during the search and seizure action. In the above paragraphs of this order, we have already held that the additions even if the same are not offered voluntarily by the assessee in the return of income

u/s.153A of the Act, AO would not have been allowed to make such additions in the non-abated assessments when the additions are not permitted to be added in the absence of any incriminating evidences. In effect, the additions would not have been validly made and approved by the appellate authorities. From this point of view, the penalties would not have successfully levied. Therefore, the penalties levied on these invalid additions in the A.Y. 2003-04 and 2004-05 requires to be deleted. Accordingly, we order the same and direct the AO to delete the penalty on the addition on account of deposits in bank for these two assessment years.

19. Now coming to the other additions of the same nature in the A.Yrs. 2005-06 to 2007-08, we have considered the assessee's stand that these are the voluntary offer of income *suo motu* offered by the assessee in the return of income filed in response to notice u/s.153A of the Act. We have also considered the fact of the Revenue that in such matters there is nothing voluntary about the disclosure of income. For this proposition, we take strength from the judgment of Supreme Court in the case of Prasanna Dugar Vs. CIT (2016) 70 taxmann.com 175 (SC) which is relevant for the legal proposition that, when the assessee voluntarily issued a statement offering the additional income in the return of income filed u/s.153A of the Act, the penalty levied is valid and sustainable. As per the said Supreme Court judgment, clause (a) and (b) of Explanation 5A to section 271(1) was explained and held that the expression 'voluntary' is in the context of the statement made by the assessee which conveys the absence of extortion from him by applying force. It is in that context the voluntary disclosure which did not clarified by the assessee by stating that he had not given any statement under pressure and he did not want to rectify or modify the statement made by him. On this legal proposition, the penalty levied by the

AO on the additional income disclosed by the assessee is sustainable. In this judgment the Supreme Court confirms the judgment of Hon'ble Calcutta High Court in the case of CIT Vs. Prasanna Dugar (2015) 371 ITR 19 (Cal.). Considering the same, we are of the view that the penalties levied by way of deposits in the bank for the above three assessment years stand confirmed. Accordingly, we order.

20. Regarding the negative cash, we find there are two kinds of additions on this account, i.e. (1) the negative cash from the books of account of the assessee (works out to Rs.15 crores for 3 A.Yrs. from 2005-06 to 2007-08) and (2) the negative cash of Rs.5 lakhs from the books of account of the firm of the assessee named M/s. Kakade Jewellers.

Regarding the negative cash from the books of account of the assessee, the case of the assessee is that the negative cash is worked out from the books of account of the assessee found during search and seizure action and the negative cash was segregated the assessment year-wise. The break-up for the same is provided in the table mentioned above against Sl.No.2 (Negative cash). This exercise was done by the assessee at the time of filing the return of income in response to notice u/s.153A of the Act and offered the same in the returns of income filed after search action and paid the taxes. Therefore, according to Ld. Counsel, it constitutes voluntary offer of income and the penalty should not be levied when the income is offered voluntarily. He fairly submitted that the absence of any dispute about the facts and figures of the negative cash in the books of account.

Per Contra, the case of the Revenue is that the cash balance particulars provided by the assessee have emanated from the books of account. Therefore, it is a clear case of concealment of income for all the 4

assessment years, i.e. A.Y. 2004-05 – Rs.25 lakhs, A.Y. 2005-06 – Rs.2,44,000/-, A.Y. 2006-07 – Rs.7,20,00,000/- and A.Y. 2007-08 - Rs.5,36,00,000/-.

21. On hearing both the parties, we find that there is no dispute about the inaccuracy of the cash books maintained by the assessee and the existence of the negative cash balances for all the assessment years under consideration. The source of this negative cash is unknown and unexplained by the assessee. However, assessee offered the same to tax and paid taxes too. Assessee desires to win the appeal on the ground of voluntary disclosure of additional income. However, the judgment of Supreme Court in the case of Prasanna Dugar Vs. CIT(supra) does not permit the same. The relevant assessments attained the finality. From this point of view, there is a clear case of concealment of particulars of income within the meaning of the Explanation 5A to section 271(1) of the Act. Further, there is no dispute on the merits of offer of the said income in all the assessment years. Therefore, we are of the opinion that the additions by way of negative cash attracts concealment of income under the penalty proceedings u/s.271(1)(c) r.w. Explanation 5A of the Act. The concealment penalty for all the assessment years is accordingly **confirmed**.

Regarding the negative cash of Rs.5 lakhs from the books of account of M/s. Kakade Jewellers, offer of Rs.5,00,000/- was made in the hands of Sri Sanjay D. Kakade, although undisputedly the relevant discrepancies are noticed in the books of the firm. It is not the case of the AO that the said additional income taxed in the hands of the firm as well. The details which led the assessee to accept the said discrepancy in the assessee's income were not available on record.

On hearing both the sides, on the concealment of offer of Rs.5,00,000/- we find there is no dispute about the existence of discrepancy in the books of account of the firm and not the assessee. Legally speaking, the should have been validly made in the hands of the firm. Thus, the penalty u/s.271(1)(c) of the Act should have been accordingly levied in the hands of the firm only. On considering the peculiar facts of this additional income, we are of the view that it is unfair to fix the concealment liability on the individual, the partner of the firm on this part of the additional income. Accordingly, we direct the AO to delete the penalty in the hands of the assessee-individual. Accordingly, the assessee is entitled to relief in this A.Y. 2008-09.

In the result, the appeals filed by the assessee for A.Yrs. 2005-06 to 2008-09 are partly allowed.

22. We shall take up the appeals pertaining to **M/s. Kakade Construction Company.**

ITA Nos. 100 to 102/PUN/2013 – A.Yrs. 2006-07 to 2008-09 – M/s. Kakade Construction Company

LEGAL ISSUES

At the outset, Ld. Counsel submitted that the assessee firm in these three appeals raising both legal as well as the merit related grounds asked for deletion of the penalty levied by the AO u/s.271(1)(c) of the Act.

On the legal issues, both the parties submitted that the legal issues are similar to the ones relatable to the appeal of the assessee for the AY 2003-04. It is their submission that the facts being similar, the arguments

of the representatives become commonly applicable to the assessment years under consideration.

Considering the commonality of the issues, arguments and counter arguments of the parties, we are of the opinion that our adjudication given in the preceding paragraphs of this order for the A.Y. 2003-04 are applicable to the A.Yrs. 2006-07 to 2008-09 *mutatis mutandis.* Accordingly, the legal grounds raised by the assessee relating to (1) existence of ambiguity in the mind of the AO qua the AO's failure to specify the applicable limb of clause (c) of section 271(1) of the Act, (2) applicability of amended Explanation 5A qua the date of event of the search action u/s.132 of the Act as well as the date of filing of the returns of income u/s.153A of the Act before the amendment etc. in the above assessment years stand **dismissed**.

ON MERITS OF PENALTY

23. Now we shall take up the grounds relating to the merits of the levy of penalty on the additional income/additions made by the AO in the assessments. For the sake of convenience, Ld. Counsel furnished a table grouping the issue-wise and assessment year-wise additions/additional income, the details of the additional income/ additions in all the 3 assessment years under consideration, i.e. A.Y. 2006-07 to 2008-09 are extracted here as under :

Sr. No.	Particulars	A.Y. 2006-07	A.Y. 2007-08	A.Y. 2008-09
1	Amount on the basis of entries in the note book containing 19 pages seized, as Bundle No.2 from the residence of Sri Sanjay D. Kakade on 08-04-2009	2,77,50,000	-	-
2	Amount paid by Sri Sanjay D. Kakade to Sri Pushkar S. Jog as per Page Nos. 11 and 12 of yellow coloured Delux Cobra file seized	-	46,00,000	-

	from the residence of Sri Sanjay D. Kakade on 08-04-2009			
3	Amount received from "Sanjay Sir" as per page No.21 of Bundle No.1 seized from the residence of Sri Sanjay D. Kakade on 08-04-2009	-	50,00,000	-
4	Amount as per Page No.19 of Bundle No.2 seized from the residence of Sri Sanjay D. Kakade on 08-04-2009	-	30,00,000	-
5	Amount as per Page No.23 of Bundle No.1 seized from the residence of Sri Sanjay D. Kakade on 08-04-2009, regarding cash payment in February 2008 for environmental clearance	-	-	18,00,000
6	Amount paid to M/s D& M Hotel Pvt. Ltd. on 23-03-2008, as per Page No.24 of Bundle No.1 seized from the residence of Sri Sanjay D. Kakade on 08-04-2009	-	-	50,00,000

Ld. Counsel for the assessee brought our attention to the above table and submitted that the figures of additional income mentioned at Sl.No.1 to 4 of the chart constitute "double additions" offered by the assessee both the in the hands of the assessee-firm as well as in the individual capacity – Sri Sanjay D. Kakade. Relying on seized material already referred to in the table above, Ld. Counsel submitted that the above narrated income was required to be offered in both the hands in order to make up the said gross declaration of Rs.40 crores. Therefore, the said incomes were offered both in his hands as well as in the hands of the firm in order to make up the gross disclosure of Rs.40 crores given by the assessee during the search action and seizure action. Offering of income in both the hands of the assessee as well as the partners was the requirement in order to meet the sanctity of Rs.40 crores of additional income offered by the assessee in the search and seizure action. According to the Ld. Counsel, the assessee has the good intention of complying with the disclosures.

However, submitted that the concealment penalty proceedings are totally different from that of assessment proceedings, Ld. Counsel for the assessee submitted that it is a matter of fact that the base-seized material

is one and the same and the same is verifiable. Assessee desires that subject to verification of the same by the authorities below, the penalty proceedings on the same income in both the hands should not be sustained. For example, referring to the offer of additional income of Rs.2,77,50,000/- in A.Y. 2006-07, Ld. Counsel for the assessee demonstrated before us that the said income is part of Rs.7.20 crores offered by the assessee for A.Y. 2006-07 in the case of Sri Sanjay D. Kakade. Similarly, Rs. 40 lakhs, Rs. 50 lakhs and Rs. 30 lakhs offered by the assessee in the A.Y. 2007-08 are the part of Rs. 5.36 crores offered by the assessee in the hands of Sri Sanjay D. Kakade. Considering the fact of double addition, when the same is found true by the AO in set-aside proceedings, the penalty in the hands of the firm needs to be deleted in the fairness of the penalty proceedings.

Per Contra, Ld. DR for the Revenue opposed vehemently and submitted that the offer of income of Rs.40 crores as a whole attracts the penalty proceedings u/s.271(1)(c) of the Act, without prejudice to the nature of individual additions in whose hands, the same is offered and taxed. In this regard, Ld. DR for the Revenue relied on various decisions including the Supreme Court judgment in the case of Prasanna Dugar Vs. CIT (supra)

On hearing both the parties, prima-facie, we find there appears to be a case of double taxation of additional income, both in the hands of the assessee as well as the partner of the assessee Sri Sanjay D. Kakade. Concerned base incriminating documents are one and the same seized during the search action. It is alto claimed that the same are written by the spouse of Sri Sanjay S. Kakade. Therefore, as requested by the Ld. Counsel

for the assessee, the issue of penalty proceedings in all these assessment years should re-visit the file of the AO for fresh examination of facts relating to the claim of allegation of double taxation of the additional incomes. Therefore, we remand the issue to the file of AO and direct the AO to examine the correctness of levying penalty twice on the same income, (1) once in the hands of the assessee and (2) in the hands of his firm. AO shall grant reasonable opportunity of being heard to the assessee in accordance with the set principles of natural justice. Accordingly, grounds relating to A.Yrs. 2006-07 to 2007-08 are allowed for statistical purposes.

24. Regarding the taxation of additional income in the hands of the assessee-firm amounting to Rs.18 lakhs and Rs.50 lakhs in the A.Y. 2008-09, assessee submitted that the base documents were seized from the residential premises of Sri Sanjay Kakade and not the business premises of the assessee. The payment involves primarily of Sri Sanjay Kakade and not the assessee-firm. Therefore, it is the prayer of Ld. Counsel that the matter needs to revisit the file of the AO for fresh adjudication. We find these are the cases of payment of cash admittedly by Sri Sanjay Kakade and not the firm. There is need for studying the material (Pages 23 and 24 of Bundle No.1) seized from the residence of Sri Sanjay Kakade on 08-04-2009. Considering these undisputed facts, we are of the opinion that the penalty levied by the AO on this additional income required to be remanded for fresh adjudication. AO shall grant reasonable opportunity of being heard to the assessee as per the set principles of natural justice. Accordingly, relevant grounds are allowed for statistical purposes.

In the result, all the appeals of the assessee for A.Yrs. 2006-07 to 2008-09 are partly allowed for statistical purposes.

25. To sum up, appeals filed by Shri Sanjay D. Kakade for A.Yrs. 2003-04 to 2008-09 are partly allowed and the appeals filed by M/s. Kakade Construction Company are partly allowed for statistical purposes.

Order pronounced in the open court on this 28th day of February, 2018.

Sd/-	Sd/-
(VIKAS AWASTHY)	**(D. KARUNAKARA RAO)**
न्यायिक सदस्य /JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 28th February, 2018.
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A) Central, Pune
4. CIT(A) Central, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A Bench" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune