

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 694/JP/2017
निर्धारण वर्ष/Assessment Year : 2006-07

Vishnu Kumar Bhargava D-16, Meera Marg, Bani Park, Jaipur.	बनाम Vs.	The ITO, Ward-7(3) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABPPB 2688 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None (Written submissions)
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 14/03/2018
उदघोषणा की तारीख / Date of Pronouncement: 19/03/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 22.06.2017 of CIT(A), Jaipur arising from penalty order passed U/s 271(1)(c) of the Act for the assessment year 2006-07. The assessee has raised the following grounds:-

" 1. The learned C.I.T. (A) has erred in fact as well as in law in confirming the penalty of Rs. 4,99,321/- levied by the A.O. u/s 271(1)(c) of the I.T. Act, 1961 on the basis of an exparte assessment order u/s 144 of the ITA.

2. The learned C.I.T. (A) has erred in fact as well as in law in confirming the order passed by the AO u/s 271(1)(c) and in not accepting the submissions of the appellant as also to the court decisions in favour of the assessee cited in the course of hearing. The appellant prays leave to add to, alter and/or amend the aforesaid grounds of appeal at or before the time of hearing of appeal."

2. None has appeared on behalf of the assessee when this appeal was called for hearing despite the fact that on the last date of hearing the assessee sought adjournment vide request on record dated 07.02.2018 and accordingly, the matter was adjourned to 14.03.2018 i.e. today. Since, none has appeared on behalf of the assessee up to 1.40 P.M. therefore, we propose to hear and disposed off this appeal ex-parte.

3. The assessee has filed written submissions on record. We have considered the written submissions of the assessee and heard the Id. DR as well as perused the order of the authorities below. The assessee filed his return of income on 26.07.2006 which was assessed u/s 144 of the Act on 20.12.2011 at a total income of Rs. 83,03,000/-. The AO made addition of Rs. 15,25,000/- as well as Rs. 65,80,000/- on account of unexplained cash deposit in the bank account u/s 69 of the Act. The AO initiated proceedings u/s 271(1)(c) of the Act in respect of addition of Rs. 15,25,000/-. The assessee though challenged the addition made

by the AO before the Id. CIT(A) and further, before this Tribunal however, the addition of Rs. 15,25,000/- was confirmed by this Tribunal. Subsequently, the AO has levied the penalty of Rs. 4,99,321/- being 100% of the tax to be evaded vide order dated 01.03.2013. The assessee again challenged the levied of penalty before the Id. CIT(A) but could not succeed.

4. Before the Tribunal, none has appeared on behalf of the assessee however, the assessee has filed written submissions, we note that the assessee has referred as many as 20 decisions of various Hon'ble High Courts as well as Hon'ble Supreme Court as under:-

- CIT vs. Filterex Technologies P. Ltd 380 ITR 222 (Karn).
- CIT vs. PH State Forest Corporation Ltd. 340 ITR 204 (H.P.)
- CIT vs. S.L.N. Traders (no.2) 341 ITR 235 (Karn)
- CIT vs. Sangeeta Leasing 343 ITR 428 (Delhi)
- CIT vs. Sadhu Singh & Sons 344 ITR 316 (P &H)
- CIT vs. Lakhani Footwear Ltd. 347 ITR 478 (P &H)
- Mehsons Export Vs. ITO 347 ITR 639 (All)
- Price Water House Coopers pvt. Ltd. vs. CIT 348 ITR 306 (SC)
- CIT vs. Amit Jain 351 ITR 74 (Delhi)
- CIT vs. Amtek Auto Ltd. 352 ITR 394 (P &H)

- CIT vs. P. rojes 356 ITR 703 (Mad)
- Naresh Chandra Agrawal vs. CIT 357 ITR 514 (All)
- CIT vs. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Karn)
- CIT vs. Krishi Tyer Retreading & Rubber Ind. 360 ITR 580 (Raj.)
- CIT vs. Whiteline chemicals 360 ITR 385 (Guj.)
- CIT vs. Sandur Manganese & Iron Ores Ltd. 362 ITR 160 (Kar)
- CIT vs. Cholamandalam Inv. & Fin. Co. Ltd. 364 ITR 680 (Mad)
- CIT vs. Shyam RajSingh 367 ITR 74 (P &H)
- CIT vs. Nayan Builders 368 ITR 722 (Bom)
- CIT-II Lucknow Vs. Jal Vidyut Nigam Limited
MANU/UP/0358/2016

The above decision has been cited in support of the contention that disallowance of any claim cannot be become the basis of levy of penalty u/s 271(1)(c) of the Act. However, we find that the decisions relied upon by the assessee were rendered in the specific facts of each case and has no similarity to the facts of the assessee. In the case of the assessee the addition was made on account of deposits in the bank account and the assessee failed to explain the source of such deposits. Therefore, when the assessee has failed explanation source and the said addition has been confirmed even up to the stage of this Tribunal

then, in the penalty proceedings only defence available to the assessee is that though the explanation of the assessee was not accepted by the AO however, the same is bonafide. We find that the assessee has not furnished any such explanation either before the Assessing Officer in penalty proceeding or before the Id. CIT(A) in the appellate proceedings. Even what the assessee has contended before the Id. CIT(A) is only the same decisions as we have referred in the forgoing paragraphs and nothing else. The assessee has not uttered even a single sentence about the source of the deposit made in the bank account and therefore, when no explanation at all was furnished by the assessee then the question of the same being bonafide does not arise.

The Id. CIT(A) has considered this issue in para 3 to 4.3 as under:-

3. The appellant has taken following grounds of appeal as under:-

1. The learned Assessing Officer has grossly erred in fact as well as in law in imposing penalty of Rs. 499321/- u/s 271(1)(c) of the I.T. Act, 1961.

2. The appellant prays leave to add to after and/or amend the aforesaid grounds of appeal at or before the time of hearing of appeal.

4. Ground No. 1

4.1 The AO has stated as under:

"In this case, return of income for Rs. 1,39,837/- was filed on 26-7-2006 which assessed u/s 144 of the on 20-12-2011 at total

income of Rs. 83,03,000/-. The addition of Rs. 15,25,000/- and Rs. 65,80,000/- were made on account of unexplained cash deposits in bank account and u/s 69 for unexplained bank deposits, respectively. As per assessment order, the concealment of the particulars of income, penalty proceeding u/s 271(1)(c) of the I.T.Act. 1961 was initiated for the addition of Rs. 15,25,000/- vide notice dated 30-12-2008 and got served upon the assessee on 31-12-2008 through Notice Server of this office. The assessee had preferred appeal before the CIT(Appeals)-III, Jaipur on 27-01-2009.

2. Vide order No. 354/JPR/ 2008-09 dated 31-03-2011, the CIT(A) has rejected the assessee's appeal on this ground. Thereafter, show cause notice u/s 271(1)(c) dated 25-06-2012, 05-07-2012, 12-09-2012, and 05-10-2012 were issued to the assessee. In this regard the assessee filed reply repeatedly saying that he has filed appeal before Hon'ble ITAT, Jaipur and to keep the penalty proceedings in abeyance till the disposal of the appeal.

3- In this case, on the basis of AIR information a total cash of Rs. 15,25,000/- was found deposited in the assessee's bank account of Indusind Bank Ltd., Jaipur (A/c No. 0016-586131-001) on various dates during the financial year 2005-06 . The details of the case deposits are as under:-

<i>Date</i>	<i>Amount</i>
<i>18.05.2005</i>	<i>5000</i>
<i>19.07.2005</i>	<i>300000</i>
<i>03.08.2005</i>	<i>300000</i>
<i>18.08.2005</i>	<i>300000</i>
<i>23.08.2005</i>	<i>350000</i>
<i>07.09.2005</i>	<i><u>270000</u></i>
<i>Total</i>	<i><u>1525000/-</u></i>

During the assessment proceedings, the assessee could not furnish or explain the source of such cash deposits , therefore the addition

was made for Rs. 15,25,000/-to the income of the assessee on account of unexplained cash deposits in bank account.

The total unexplained income of Rs. 15,25,000/- was added to the income of the assessee and penalty proceedings u/s 271(1)(c) were initiated, accordingly.

Thus, even after providing appropriate opportunity of being heard to the assessee, the assessee did not availed the same except to suggestion for kept in abeyance the proceedings till the disposal of the appeal filed before Hon'ble ITAT. In view of these facts, it is clear that the assessee has no explanation regarding concealed income against the proposed action for such penalty. Therefore, it has been deemed fit to impose of the penalty u/s 271(1)(c) of the I.T.Act. 1961.

Considering all the facts and circumstances of the case, I satisfied that the assessee has deliberately & willfully concealed the income. Therefore, penalty u/s 271(1)(c) of the I.T.Act. 1961 for Rs. 4,99,321/-/- is hereby imposed, which is worked out as under:

<i>1. Tax on declared income</i>	<i>4,064/-</i>
<i>2. Tax on assessed Income</i>	<i>5,03,385/-</i>
<i>3. Tax sought to be evaded (2-1)</i>	<i>4,99,321/-</i>
<i>4. Minimum penalty 100% of above</i>	<i>4,99,321/-</i>
<i>5. Maximum Penalty 300% of above</i>	<i>14,97,963/-</i>
<i>6. Penalty imposed</i>	<i>4,99,321/-</i>

4.2 During the appellate proceeding the appellant has filed written submission as under and also argued the case on the same basis.

" In the present case, the assessee filed a return on 26th July, 2006 declaring income at Rs 1,39,837/-. The assessment proceedings were carried by way of scrutiny assessment. Throughout the course of proceedings the humble appellant continuously protested that the

notice u/s 143(2) dated 24-07-2007 sent by registered post was not served within the statutory time fixed and was actually delivered on 03-08-2007. According to the assessee, the scrutiny proceedings were barred by limitation prescribed there for. Resultantly, assessment proceedings were carried out ex-parte in the absence of the assessee appellant. By the assessment order so framed an addition was made on account of cash credits appearing in the savings bank account of the humble appellant. The AO, in the absence of any representation by the appellant, made an addition to the declared income, of the quantum of such deposits, by way of income from undisclosed sources. Such an addition was, to say the least, made on a presumptuous basis. It may be relevant to state and mention that in making a cash deposit in the bank account, there is always a presumption that the depositor is seeking to bring the amount of deposit within the regular channel, which unless so deposited, may have escaped the entry into the regular channel.

Before the CIT(A) in the quantum proceedings, entire set of documents demonstrating the basis, details and reasons for the amount having been received in cash and then deposited in the bank, were sought to be explained. However, the CIT (A) treated the said documents as falling within the ambit of 'Additional Evidence' and refused to look into or to even consider the same. The A's appeal to the ITAT also suffered the same fate. This has resulted in the addition having been made in an ex-parte assessment on a presumptuous basis, having never been subjected to any verification at any stage whatsoever.

It is in the light of this fact situation that the provisions of sec 271 (1)(c) have to be looked at and an adjudication made as to whether the A has attempted to conceal any income [taxable income] at all or has filed any inaccurate particulars of income, which could have enabled the AO to levy any penalty under that provision. In the light of judgments elaborated herein below, it would also have to be determined whether the order impugned contains any consideration of the existence of the necessary

concomitants, viz., any intention to evade tax at all. Rather it is a case where the A has honestly attempted to bring cash receipts into the regular banking channel.

The legal position, as having emerged in the process of judicial churning beginning with the case of Dilip C Shroff 291 ITR 519 and crystallizing after rendering of judgment in Reliance Petro products Pvt. Ltd reported in [2010] 322 ITR 158 , is that disallowance of any claim cannot become the basis of the levy of penalty under the said provision. The aforesaid rule has since been followed in umpteen cases:

1. CIT v/s Filterex Technologies p. Ltd. 120161380ITR 222 (Karn). In this case the Hon 'ble Karnataka High Court has taken the view that Penalty proceedings are quite different from assessment proceedings. It is well-settled that the levy of penalty is not automatic if the addition or the disallowance is sustained by the appellate authorities. The ingredients of Sec271 (1)(c) have to be satisfied for levying the penalty. The fact situation emerging in the matter was that a sum of Rs 79,98,878/- was paid without deducting TDS and was accordingly disallowed u/s 40(a)(ia). ITAT 's order cancelling the penalty was sustained by the High Court.

2. CIT v HP State Forest Corporation Ltd. 120121 340 ITR 204(H.P.) In this case the Hon 'ble Himachal Pradesh High Court has taken the view that where assessee discloses the basic facts and does not conceal any material fact, no penalty could be levied. Facts emerging in the matter were that the assessee had disclosed the work in progress with a note that the net provision was for a sum of Rs 2,12,18,295/- but no such provision was made. The explanation was that the closing stock of forest products had reduced on account of deterioration. The Tribunal's view that all necessary facts had been disclosed and as such no penalty could be levied was upheld by the Hon'ble High Court.

3. CIT v/s S.L.N.Traders(no.2) 341 ITR 235(Karn). In this case the Hon'ble Karnataka High Court was dealing with an almost identical

fact situation wherein the unproven credits in the assessee's books of account to the tune of Rs 14 Lacks were added to his declared income. In proceedings for penalty, the assessee took a simple plea of having offered the credits to tax only because of its inability to prove genuineness. The penalty levied by the AO was cancelled by the CIT[A] and such cancellation was upheld by the ITAT and the High Court.

4. CIT v/s Saneeta Leasi' 2012 343 ITR 428(Delhi). In this case the assessee had claimed depreciation based on a transaction of sale and simultaneous lease of assets. The authorities found that the claim was bogus as no sale was affected and the assessee was cheated. The CIT (A) deleted the penalty as the particulars filed and the claim made by the assessee was bonafide and deleted the penalty. His order was upheld both by the ITAT and the Hon'ble Delhi High Court.

5. CIT v/s Sadhu Singh & Sons[2012] 344ITR316(P&H) In this case there was a finding that the difference in valuation stock was due to lower GP rate and cash credits were due to bona fide mistakes. In this case also the penalty levied by the Ao was deleted by the CIT(A) . Revenue's contentions to the contrary were dismissed by the ITAT who took the view that there was no mens rea for concealment of Income which had formed the basis for making additions to the Income and in the absence of such mens rea , no penalty can be levied.

6. CIT v/s Lakhani Footwear Ltd [2012] 347 ITR 478(P&H). In this case the assessee had made claims for the grant of depreciation which were debatable and were disallowed in quantum proceedings. However, in an appeal from the order levying penalty, the CIT(A) took the view that merely because the claim was debatable and was disallowed by the revenue authorities, would not ipso facto convert the declaration made by the assessee into a non-declaration or the particulars into incorrect particulars. His order was upheld by the ITAT and the Hon'ble High Court took the view that no penalty could be levied in such a case.

7. Mehsons Export v/s ITO[2012] 347 ITR 639(All) In this case the assessee who had purchased raw material from nomads, who could not be produced for verification for obvious reasons. The penalty levied by the AO was confirmed by the CIT(A) and the ITAT . However, the Hon'ble Allahabad High Court took the view that concealment of Income can be assumed, but concealment has to be alleged and found as a finding of fact. It was also held that failure to produce some of the suppliers would not amount to having made a wrong claim. The High Court accordingly quashed the penalty.

8. Price Water House Coopers Pvt. Ltd. v/s CIT [2012]348 ITR 306 (SC), In this matter Tax Audit Report was filed along with the return and that it unequivocally stated that the provision for payment was not allowable Under Section 40A(7) of the Act indicates that the Assessee made a computation error in its return of income. There is also no question of the Assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the Assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The imposition of penalty on the Assessee is not justified. The Assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars. Court shall not interfere with findings of Lower Court unless there is certain error apparent on face of record.

9. CIT v/s Amit Jain [2013] 351 ITR 74(Delhi) The Delhi High Court observed that the record reveals that the amount in question, which formed the basis for the Assessing Officer to levy penalty was in fact truthfully reported in the returns. In view of this circumstance, that the Assessing Officer chose to treat the income under some other head cannot characterize the particulars or reported in the return as an "inaccurate particulars" or as suppression of facts. It was held that it is up to the Assessing Officer to interpret the return and discern as to which head of income the amount had to be brought to tax. In view of

the above circumstance, this court is of the view that no substantial question of law arises for consideration and the same is dismissed.

10. CIT v/s Amtek Auto Ltd. [2013] 352 ITR 394(P&H) Assessee disclosed the nature of transactions in its return. It was on the basis of the interpretation of the provisions of the statute, the Assessing Officer found that such expenditure claimed by the assessee is not the revenue expenditure but the capital expenses. There is a fine distinction as to when an expenditure can be treated as a revenue or a capital expenditure. Therefore, merely for the reason that the assessee has claimed the expenditure to be revenue will not render the assessee liable to penalty proceedings. The order passed by the Tribunal does not give rise to the questions of law sought by the Revenue. Consequently, we do not find any merit in the present appeal and the same is dismissed

11. CIT v/s P. Roles [2013] 356 ITR 703(Mad) The Madras high Court held that it was not clear as to whether it was a case of suppression of turnover or of estimation of income at a lower rate. When the revenue itself had not come out with clear case of suppression of turnover and where there was no specific finding with regard to such factual aspect, imposition of penalty under section 271(1)(c) was not warranted.

12. Naresh Chandra A2rawal v/s CIT [2013] 357 ITR 514 (All) In the present case, nothing was concealed by the assessee. It was the AO who had rejected the books of account in the second round and applied the 8 per cent, net profit rate prescribed under section 44AD. In the instant case, the turnover was more than 40 lakhs, so section 44AD was not applicable, none the, less the AO was inspired with the provision of section 44AD and made the addition by estimating the net profit rate, at 8 per cent. When the addition was made on estimate basis, no penalty under section 271(1)(c) of the IT Act could be imposed as per the ratio laid down in the case of OT v. Arjun Prasad Ajit Kumar (2008) 214 CTR (All) 355. Moreover, it may be mentioned that no finding of deliberate concealment of income was brought in the instant case as the assessee has never suppressed the interest income

from FDRs. Interest income from FDRs was duly shown. It was for the AO to treat this income as business income or income from other sources and the same was upheld by appellate authorities. But the fact remains that there was no concealment on the part of assessee. So, no penalty for concealment was leviable.

13. CIT v/s Maniunatha Cotton & Ginnin² Factory [2013] 359 ITR 565(Karn) *It is clear that merely because the assessee agreed for addition and accordingly assessment order was passed on the basis of this addition and when the assessee has paid the tax and the interest thereon in the absence of any material on record to show the concealment of income, it cannot be inferred that the said addition is on account of concealment. Moreover, the assessee has offered the explanation. The said explanation is not found to be false. On the contrary, it is held to be bona fide. In fact in the assessment proceedings there is no whisper about these concealment. Under these circumstances, the entry found in the rough cash book could have been reflected in the accounts for the said financial year in which the survey took place as the last date for closing the account was still not over. The very fact that the assessee agreed to pay tax and did not challenge the assessment order, it is clear the conduct of the assessee cannot be construed as mala fide. Therefore, the Tribunal was justified in setting aside the orders passed by the appellate authority as well as the assessing authority. The Tribunal was justified in holding that the entire proceedings are vitiated as the notice issued is not in accordance with law and accordingly justified in interfering with the order passed by the appellate authority as well as the assessing authority and in setting aside the same. If the appellate authority was satisfied with the addition it has to be made on the ground of undervaluation of the closing stock, which was not the finding recorded by the assessing authority, which was not the basis for the initiation of the penalty proceedings by the assessing authority then in view of the law aforesaid, it is the appellate authority who should have initiated penalty proceedings and issued notice to the assessee to show cause why penalty should not be imposed. The said procedure is not followed and, therefore, though for different reasons, the first appellate authority set aside the order levying*

penalty, the Tribunal correctly appreciated the facts and in a proper perspective and was justified in not interfering with the order passed by the appellate authority setting aside the penalty order. In that view of the matter, we do not see any justification to interfere with the well considered order passed by the Tribunal. Thus, the substantial questions of law are answered in favour of the assessee and against the revenue.

*14. CIT v/s Krishi Tver Retreadingji & Rubber Ind. [2014] 360 ITR 580 Raj.**The Hon'ble Rajasthan High Court speaking through division bench held that the additions were sustained purely on estimate basis and no positive fact or findings had been found to make the said addition. Penalty under section 271(1) (c) could not be levied on such guesswork or estimation.*

*15. CIT v/s Whiteline Chemicals [2014] 360 ITR 385 Gui**In this case Tribunal had observed that no penalty could be imposed merely because account books of assessee were rejected and profit was estimated on basis of fair gross profit ratio. Tribunal found no additional matter for sustaining penalty. With respect to retention of sales-tax by assessee, Tribunal found that revenue could not establish such charge. Explanation offered by assessee could not be termed as not bona fide. No question of law arises.*

*16. CIT v/s Sandur Manjianese & Iron Ores Ltd 120141 362 ITR 160(Kar)**In the instant case a wrong claim is made for deduction and an explanation was offered, in the absence of a finding that he has failed to prove such explanation as bona fide, no penalty can be imposed. In the instant case, a particular stand is taken based on the decisions-the High Court and is not able to substantiate the same. But as long as there is no finding by the Appellate Authority that the explanation offered is not, a bona fide one, the imposition of penalty is illegal. That is precisely what the Tribunal has held. It is settled law, imposition of penalty is not automatic. It is only when there is an attempt to evade tax by offering explanation which is found to be false or not bona fide the penalty can be imposed In the facts of the case we are also*

satisfied that the imposition of penalty by the lower Appellate Authority was not justified or the material on record and the Tribunal was justified from setting aside the order of imposing penalty. The court found no merits in the appeal by revenue and the same was dismissed

17. CIT v/s Cholamandalam Inv. & Fin. Co Ltd [2014]364 ITR 680(Mad) *The contention raised by the assessee was not held to be not according to truth or an inaccurate particulars furnished or with a view to conceal the actual income. In fact, the Assessing Officer in the penalty order dated 26.04.2000, has not given any independent finding in support of his conclusion that there was a deliberate design on the part of the assessee to inflate the cost of acquisition. As pointed out by the first Appellate Authority all the details of the transactions were placed before the Assessing Officer and an explanation was given as to why the market value of the property need not be equivalent to the WDV. The Assessing Officer while completing the assessment proceedings, chose to adopt the WDV. Therefore, that by itself would not amount to furnishing inaccurate particulars or with a view to conceal the actual income. Therefore, the order passed by the Tribunal calls for no interference. Accordingly, the Tax Case (Appeal) fails and it is dismissed*

18. CIT v/s Shvam RajSin'h [2014] 367 ITR 74 (P&H) *It was claimed that there was no intentional understatement of income or deliberate furnishing of inaccurate particulars on the part of the assessee. The plea of the assessee was found to be plausible and it cannot be held to be without any substance. Thus, under the circumstances, the levy of penalty by the Assessing Officer and Commissioner of Income-tax (Appeals) was not justified. In view of the above, the appeal disposed of dismissed accordingly.*

19. CIT v/s Navan Builders [2014] 368 ITR 722(Bom) *Once it turns out that the claim of the assessee could have been considered for deduction as per a person properly instructed in law and is not completely debarred at all, the mere fact of confirmation of disallowance would not per se lead to the imposition of penalty. Since*

addition and disallowances on which penalty was imposed was highly debatable issue, Tribunal was justified in deleting the penalty levied under section 271(1) (c).

20. CIT-II Lucknow v/s Jal Vidyut NiRam Limited MANU/UP/0358/2016 *The Allahbad High Court opined as follows : We are unable to agree with the aforesaid finding recorded by the Assessing Officer which has been rightly reversed by the Commissioner Income Tax and affirmed by the Tribunal, inasmuch as, a wrong explanation cannot amount to furnishing of an incorrect particular. The non furnishing of explanation falls within the same zone of consideration unless there is any adverse evidence to indicate that the concealment was deliberate or incorrectly depicted in the return with a view to evade any liability. The explanation in relation to Section 271(1)(c) as pressed into service read with clause (B) if read together, the same would clearly indicate that the ratio of the judgment in the case of Commissioner of Income Tax Vs. Reliance Petro Products Pvt. Ltd. (supra) is clearly attracted. The Commissioner Income Tax (Appeal) has specifically recorded that the variation in returned income and assessed income is disallowance of expenses not found allowable, no penalty under Section 271(1) (c) of the Act is imposable and once such a finding has specifically been recorded, the penalty proceedings in -the facts and circumstances of the case cannot be sustained.*

As such, the onus lying on the department to show that the necessary con-commit ants of section 271(1)© of the Income Tax Act, have not been discharged in the case in hand and the penalty levied by the impugned order is without any basis whatsoever. The same may therefore be quashed and set-aside."

4.3 I have carefully considered the facts of the case, findings of the AO and

submission of the appellant. It is seen that AO levied penalty u/s 271(1)(c) w.r.t. unexplained deposit of Rs. 15,25,000/- deposited in bank account. The assessment was completed u/s 144 as assessee did not produce evidence in his support.

In appellate proceedings also, the addition was confirmed as evidence given was not accepted. Even in penalty proceedings, no evidence was furnished. These facts show that assessee has concealed the income and AO has rightly imposed the penalty. Accordingly the penalty imposed by the AO is confirmed."

Thus, it is clear that even before the Id. CIT(A), the assessee did not furnish any explanation regarding the source of the deposits made in the bank account. Hence, in the facts and circumstances of the case, we do not find any error or illegality in the orders of the authorities below. Accordingly we confirmed the levy of penalty u/s 271(1)(c) of the Act.

In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 19/03/2018.

Sd/-

(भागचंद)

(Bhagchand)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 19/03/2018.

*Santosh.

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

1. अपीलार्थी / The Appellant- Vishnu Kumar Bhargava, Jaipur.

2. प्रत्यर्थी / The Respondent- ITO, Ward-7(3),Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 694/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar