

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

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

**आयकर अपील सं. / ITA Nos.737 to 740/PUN/2016**  
**निर्धारण वर्ष / Assessment Years : 2006-07, 2008-09, 2010-11 & 2011-12**

Prakash Raman Chaudhari,  
Garden View Bungalow,  
Saptashrungi Colony,  
Old Gangapur Naka,  
Nashik – 422005 ..... अपीलार्थी/Appellant

PAN:AAJPC9817C

Vs.

The Income Tax Officer (Central)-I,  
Nashik ..... प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA Nos.742 to 747/PUN/2016**  
**निर्धारण वर्ष / Assessment Years : 2006-07 to 2011-12**

Megha Prakash Chaudhari,  
Garden View Bungalow,  
Saptashrungi Colony,  
Old Gangapur Naka,  
Nashik – 422005 ..... अपीलार्थी/Appellant

PAN:ACTPC2132J

Vs.

The Income Tax Officer (Central)-I,  
Nashik ..... प्रत्यर्थी / Respondent

Assessee by : Shri Kishore Phadke  
Revenue by : Smt. Shailaja Rai

सुनवाई की तारीख / <b>Date of Hearing : 25.04.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 15.05.2018</b>
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**आदेश / ORDER****PER SUSHMA CHOWLA, JM:**

This bunch of appeals filed by related assessee are against respective consolidated orders of CIT(A)-12, Pune, both dated 18.01.2016 relating to assessment years 2006-07 to 2011-12 against levy of penalty under section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. This bunch of appeals relating to connected assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. In order to adjudicate the issues, reference is being made to the facts in ITA No.737/PUN/2016, relating to assessment year 2006-07.

3. The assessee in ITA No.737/PUN/2016, relating to assessment year 2006-07 has raised the following grounds of appeal:-

1. *On the facts and in the circumstances of the case and in law, the Lower Authorities have erred in confirming the penalty u/s 271(1)(c) to the extent of amount of sum of Rs.10,665/- being alleged unexplained jewelry, by disregarding appellant's contention.*
2. *On the facts and in the circumstances of the case and in law, the Lower Authorities have erred in confirming the penalty u/s 271(1)(c) on Additional Income declared in the return of sum of Rs.7,81,610/- by disregarding appellant's contention.*
3. *On the facts and in the circumstances of the case and in law, the Lower Authorities have erred in confirming the penalty u/s 271(1)(c) on alleged unproved loan of Rs.4,50,000/- by disregarding appellants contention.*

4. The issue raised in the present appeal is against levy of penalty under section 271(1)(c) of the Act.

5. Briefly, in the facts of the case, search and seizure action under section 132 of the Act was conducted in Chaudhari Group of cases, Nashik on 21.03.2012. The residential premises of assessee was searched under section 132 of the Act and survey operation under section 133A of the Act was carried out at the business premises of the assessee. During the course of search, certain documents were seized and the statements of assessee and its employees were recorded. The assessee had originally filed the return of income on 29.10.2007 declaring total income of ₹ 2,62,200/-. Notice under section 153A of the Act was issued to the assessee. In response thereto, the assessee furnished return of income declaring total income of ₹ 2,62,275/- and agricultural income of ₹ 2,82,750/- including additional income of ₹ 75/-. The Assessing Officer vide para 6 noted that the assessee in the return of income filed in response to notice issued under section 153A of the Act had disclosed additional income of ₹ 75/-. He further recorded satisfaction that the assessee had concealed particular of such income within meaning of Explanation 5A to section 271(1)(c) of the Act. Thereafter, addition was made on account of agricultural income and unexplained jewellery, for which penalty proceedings were initiated under section 271(1)(c) of the Act. However, no satisfaction was recorded as to which limb of said section has not been fulfilled. The Assessing Officer levying concealment penalty vide order dated 15.09.2014 held the assessee to have furnished inaccurate particulars of income and thereby concealed his income to the extent of addition made on account of estimation of agricultural income and unexplained jewellery and unaccounted income. The Assessing Officer levied penalty under section 271(1)(c) of the Act at ₹ 48,850/-.

6. The CIT(A) has deleted additions made on account of estimation of agricultural income and unexplained jewellery has been confirmed in the hands of assessee in all the years. The issue which is raised in the present appeal is in respect of additional income offered by the assessee in response to notice issued under section 153A of the Act and addition on account of unexplained jewellery. In assessment year 2006-07, the additional income offered was only ₹ 75/-. However, in assessment year 2008-09, additional income offered after claiming short term loss was ₹ 7,976/-, hence there was decline in income returned under section 153A of the Act. In assessment year 2010-11, the additional income was to the extent of ₹ 1,02,68,417/- and ₹ 32,77,864/- in assessment year 2011-12. Further, unexplained investment in jewellery was added in the hands of assessee by Assessing Officer at ₹ 21,073/- in assessment year 2006-07, ₹ 13,298/- in assessment year 2008-09, ₹4,38,888/- in assessment year 2010-11 and ₹ 3,18,182/- in assessment year 2011-12. Another addition which has been made in assessment years 2010-11 and 2011-12 is on account of on-money received of ₹ 12,33,000/- in assessment year 2010-11 and ₹ 7,09,118/- in assessment year 2011-12. The Assessing Officer in assessment year 2010-11 and 2011-12 after making additions on account of on-money had initiated penalty proceedings under section 271(1)(c) of the Act without mentioning the limb which has been not complied with. While levying penalty under section 271(1)(c) of the Act, the Assessing Officer holds that the additional income was offered consequent to search and hence, provisions of Explanation 5A to section 271(1)(c) of the Act were attracted. However, in para 10, the Assessing Officer holds the assessee to have furnished inaccurate particulars of income and thereby concealed his income to the extent of ₹ 1,21,51,218/-, which comprised addition on account of

unexplained jewellery, on-money received and admittance of additional income and he therefore, imposed penalty ₹ 37,41,431/- in assessment year 2010-11. Similar observations have been made by the Assessing Officer in assessment year 2011-12 and penalty has been levied for furnishing of inaccurate particulars and thereby concealing income. In all the years under appeal in the case of Prakash Raman Chaudhari, the Assessing Officer while recording satisfaction in respect of additional income offered, was of the view that the assessee had concealed particulars of income within meaning of Explanation 5A to section 271(1)(c) of the Act. In respect of other additions made in the hands of assessee, no satisfaction was recorded in respect of any of the limbs of section and penalty proceedings were simply initiated under section 271(1)(c) of the Act. The CIT(A) confirmed levy of penalty, against which the assessee has filed present appeals. However, during the course of hearing, the assessee filed additional grounds of appeal which read as under:-

4. *Appellant contends that, as regards the additional income declared in the 153A return amounting to Rs.7,81,611/-, the learned AO*
  - a. *recorded satisfaction for concealment of particulars of income (i.e. limb-1);*
  - b. *initiated penalty proceedings for concealment of particulars of income and for furnishing of inaccurate particulars (i.e. limb-1 and limb-2);*
  - c. *and finally, levied penalty for furnishing of inaccurate particular of income (i.e. limb-2).*

*Appellant contends, there was confusion and ambiguity in the entire process of levy of concealment penalty.*

5. *Appellant contents that, as regards the additions of Rs.4,60,665/- made by the learned AO while framing the 153A order, learned AO*
  - a. *did not record any conspicuous satisfaction for concealment of particulars of income or for furnishing of inaccurate particulars (i.e. either of the limbs)*

- b. initiated penalty proceedings for concealment of particulars of income and for furnishing of inaccurate particulars (i.e. limb-1 and limb-2);*
- c. and finally, levied penalty for furnishing of inaccurate particulars of income (i.e. limb-2).*

*Appellant contends, there was confusion and ambiguity in the entire process of levy of concealment penalty.*

- 6. *The learned CIT(A), Pune erred law and on facts by confirming levy of penalty despite the confusion and ambiguity crept into the process of penalty proceedings.*

7. The learned Authorized Representative for the assessee pointed out that additional grounds of appeal raised in the present appeal involves jurisdictional issue and do not require any investigation of facts and hence, the same may be admitted.

8. We find merit in the plea of assessee as by way of additional grounds of appeal the assessee has challenged levy of penalty for not recording proper satisfaction and also for initiating and levying penalty for both the limbs of section 271(1)(c) of the Act, which is not warranted. The learned Authorized Representative for the assessee before us has placed reliance on the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Shri Samson Perinchery in Income Tax Appeal No.1154 of 2014 with other Income Tax Appeals Nos.953 of 2014, 1097 of 2014 and 1226 of 2014, judgment dated 05.01.2017 and the Pune Bench of Tribunal in Satish Dondulal Parakh Vs. ACIT in ITA Nos.1200 & 1201/PUN/2016, relating to assessment years 2006-07 & 2011-12, order dated 06.04.2018 and Praj Industries Ltd. Vs. DCIT in ITA No.1490/PUN/2015 relating to assessment year 2006-07, order dated 05.04.2018. The learned Authorized Representative for the assessee after taking us through the basis for initiation of penalty proceedings and the basis for levy of penalty pointed out

that where penalty proceedings have been initiated by recording satisfaction and not mentioning which of the limbs has been contravened and thereafter, show causing the assessee on both the limbs of section and levying also penalty on both the limbs, then the said levy of penalty is not sustainable.

9. The learned Departmental Representative for the Revenue strongly opposed the stand of learned Authorized Representative for the assessee and placed reliance on the ratio laid down by the Hon'ble High Court of Karnataka in CIT & Anr. Vs. M/s. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Kar).

10. We have heard the rival contentions and perused the record. The issue which is raised by way of additional grounds of appeal being jurisdictional issue is admitted for adjudication. The issue which is raised by the assessee is where the Assessing Officer has initiated penalty proceedings on one limb and levied penalty on both the limbs of section 271(1)(c) of the Act, is penalty sustainable. Second aspect of the same issue is where no satisfaction has been recorded during the course of assessment proceedings and penalty proceedings have been initiated, is the levy of penalty on both the limbs in the order passed for levying penalty for concealment sustainable. The answer to both the issues raised in the present appeal is 'No'. Penalty under section 271(1)(c) of the Act is leviable where the assessee has concealed its income or furnished inaccurate particulars of income. Both the limbs of section 271(1)(c) of the Act are independent of each other and do not overlap each other. The Assessing Officer while recording satisfaction during the course of assessment proceedings has to come to finding as to which limb of section 271(1)(c) of the

Act has not been fulfilled by the assessee and initiate penalty proceedings accordingly. In case of failure of Assessing Officer so to initiate under particular limb of section 271(1)(c) of the Act, there is no merit in levying penalty for concealment on any of the limbs of section 271(1)(c) of the Act. Further, where the Assessing Officer in the penalty order levies penalty on both the limbs of section 271(1)(c) of the Act, without coming to a finding in respect of one of the limbs, such an order of concealment penalty also suffers from infirmity and cannot be sustained. In cases, where during the course of assessment proceedings, satisfaction has been recorded on one of the limbs and penalty has been levied on the other limb or on both the limbs, such order levying penalty cannot be sustained. In this regard, we find support from the ratio laid down by the the Hon'ble Bombay High Court in CIT Vs. Shri Samson Perinchery (supra) and also the orders of Pune Bench of Tribunal.

11. First, we shall refer to the findings of the Tribunal in Kanhaiyalal D. Jain Vs. ACIT in ITA Nos.1201 to 1205/PN/2014, relating to assessment years 2003-04 to 2007-08, dated 30.11.2016, wherein reference was also made to the ratio laid down by the Hon'ble Karnataka High Court in CIT & Anr. Vs. Manjunatha Cotton and Ginning Factory (supra) and CIT Vs. SSA'S Emerald Meadows (2016) 73 taxmann.com 241 (Kar), wherein SLP has been dismissed by the Hon'ble Supreme Court and it was held as under:-

*"13. We have heard the rival contentions and perused the record. The issue arising in the present bunch of appeals is jurisdictional issue of levy of penalty under section 271(1)(c) of the Act. The requirement of section is that where the Assessing Officer or the Commissioner of Appeals or the Principal Commissioner or Commissioner, in the course of any proceedings under the Act, is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, then he may direct that such person shall pay by way of penalty the amounts as specified in sub-clause (iii) which would be in addition to tax, if any, payable by the said person. The section thus requires the concerned Officer to record satisfaction in the course*

of any proceedings under the Act, that the person has concealed the particulars of his income or furnished inaccurate particulars of his income. After recording the satisfaction, during the course of penalty proceedings also, the concerned Officer has come to a finding that as to whether the person has concealed the particulars of his income or furnished inaccurate particulars of such income and thereafter, levy the penalty accordingly. The word used between the two acts i.e. concealment of particulars of income and furnishing of inaccurate particulars of such income is 'or'. So the penalty levied by the concerned Officer is on satisfaction of any of the limbs and not the satisfaction of both the limbs. Where the assessee had concealed the particulars of income in particular circumstances, then the Assessing Officer may record satisfaction to that effect and initiate penalty proceedings and thereafter on fixation of charge, levy the penalty for such act of concealing the particulars of income. Similarly, in cases where the assessee concerned had furnished inaccurate particulars of such income, then similar exercise has to be carried out by the concerned Officer.

14. The first stage of invocation of provisions of section 271(1)(c) of the Act is the satisfaction to be recorded by the Assessing Officer, which admittedly, has to be during the course of assessment proceedings. So, where the assessment proceedings are pending, then the Assessing Officer has to apply his mind and on being satisfied, he has to give a finding that the assessee before him has either concealed the particulars of income or furnished inaccurate particulars of income in respect of the issue before him. Thereafter, the notice should be issued to such person by the concerned Officer, wherein it should be clear that the assessee has to justify its case either for concealment of income or furnishing of inaccurate particulars of income. There may be cases where there is issue of both concealment of income and furnishing of inaccurate particulars of income, based on the nature of additions, then in such cases, satisfaction and notice thereon should specify exact charge against the assessee. The charge has to be further specified while completing penalty proceedings and the Assessing Officer has to come to a conclusion as to whether it is case of concealment of income or furnishing of inaccurate particulars of income. The question which further arises where the satisfaction recorded by the Assessing Officer and the notice issued thereafter is without application of mind, then can the subsequent order passed levying penalty be held to be valid?. The Hon'ble Karnataka High Court in CIT & Anr. Vs. Manjunatha Cotton and Ginning Factory (supra) had dealt upon the issue of notice under section 274 of the Act for the purpose of levying penalty for concealment and observed as under:-

"59. As the provision stands, the penalty proceedings can be initiated on various ground set out therein. If the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under Section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on deeming provision contained in Explanation-1 or in Explanation-1(B), then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in Section 271 should be made known about the grounds on which they intend imposing penalty on him as the Section 274 makes it clear that assessee has a right to contest such proceedings and should have full opportunity to meet the case of the

*Department and show that the conditions stipulated in Section 271(1)(c) do not exist as such he is not liable to pay penalty. The practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under Section 274 should satisfy the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended if the show cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.*

*60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(1)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.*

*61. The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income are different. Thus the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars. The Apex Court in the case of Ashok Pai reported in [2007] 292 ITR 11 (SC) at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of Manu Engineering Works reported in [1980] 122 ITR 306 (Guj) and the Delhi High Court in the case of CIT v. Virgo Marketing P. Ltd. reported in [2008] 171 Taxman 156, has held that levy of penalty has to be clear*

as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind."

15. The Hon'ble Karnataka High Court has laid down the proposition that the Assessing Officer is to be satisfied in the course of proceedings that there is either concealment of income or furnishing of inaccurate particulars of income under clause (c) to section 271(1) of the Act. It has been categorically held that concealment of income and furnishing of inaccurate particulars of income are different. The Hon'ble High Court has thus, laid down that the Assessing Officer while issuing notice has to come to conclusion that whether it is case of concealment of income or case of furnishing of inaccurate particulars of income. The reliance in this regard was placed on the ratio laid down by the Hon'ble Supreme Court in *T. Ashok Pai Vs. CIT (2007) 292 ITR 11 (SC)*, wherein at page 19 it was held that concealment of income and furnishing inaccurate particulars of income carry different connotation. Applying the said proposition, it was held that where the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similarly, for furnishing inaccurate particulars of income, the standard proforma without striking of relevant clauses, as per the Hon'ble High Court would lead to inference as to non-application of mind.

16. Further, the Hon'ble Karnataka High Court in *CIT Vs. SSA'S Emerald Meadows (supra)* has dismissed the appeal of Revenue, where the Tribunal had allowed the appeal of assessee holding that the notice issued by the Assessing Officer under section 274 r.w.s. 271(1)(c) of the Act to be bad in law as it does not satisfy which limb of section 271(1)(c) of the Act under which it has been initiated. The Hon'ble High Court had relied on decision of Division Bench of the Court rendered in *CIT & Anr. Vs. Manjunatha Cotton and Ginning Factory (supra)*. The Hon'ble Supreme Court in *CIT Vs. SSA'S Emerald Meadows (supra)* has dismissed the Special Leave Petition.

17. The Pune Bench of Tribunal in *M/s. Sai Venkata Construction Vs. Addl. CIT (supra)* and in *Sanjog Tarachand Lodha Vs. ITO (supra)* have applied the ratio laid down by the Hon'ble Karnataka High Court (*supra*) and held that where there is no striking off of either of limbs, then notice issued under section 274 r.w.s. 271(1)(c) of the Act was invalid and subsequent penalty proceedings were held to be vitiated.

18. The Mumbai Bench of Tribunal in *Sanghavi Savla Commodity Brokers P. Ltd. Vs. ACIT in ITA No.1746/Mum/2011*, relating to assessment year 2007-08, order dated 22.12.2015 while deciding similar issue, wherein the Assessing Officer had initiated penalty proceedings for concealment of particulars of income without striking inappropriate words or any parts of notice and proceeded to levy penalty for concealment, then following the ratio laid down by the Hon'ble Karnataka High Court, the Tribunal held that notice issued for initiating penalty proceedings were invalid and consequently penalty proceedings were invalid.

19. Similar proposition has been laid down by Kolkata Bench of Tribunal in *Shri Deepak Kumar Patwari Vs. ACIT in ITA Nos.616 to 618/Kol/2013*, relating to assessment years 2007-08 to 2009-10, order dated 03.02.2016 and it has been further held that the provisions of section 292B of the Act cannot cure the basic defect in assumption of jurisdiction and could only cure the mistake,

defect or omission in the return of income, assessment, notice or the proceedings. The Tribunal further held that show cause notice and the reasons mentioned in the show cause notice were part of process of natural justice and the defect in such notice could not be overlooked. Similar proposition has further been laid down in other decisions of various Benches of Tribunal which have been relied upon by the assessee before us.

20. The learned Departmental Representative for the Revenue placed heavy reliance on the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Smt. Kaushalya (supra). In the facts of the case before the Hon'ble Bombay High Court, the Hon'ble High Court quashed the penalty levied for assessment year 1967-68 as the same was imposed without affording reasonable opportunity of hearing to the assessee. In respect of other two years where there was non-striking of inaccurate portion, the Hon'ble High Court held that the same would not invalidate the notice issued under section 274 of the Act. It was further held that the assessment orders were also made and reasons for issuing notice under section 274 r.w.s. 271(1)(c) of the Act were recorded by the Assessing Officer and since the assessee fully knew in detail the exact charge of Department against him, it could not be said that either there was non-application of mind by the ITO or so-called ambiguity wording in the notice impaired or prejudiced the right of assessee of reasonable opportunity of being heard. The jurisdictional High Court deliberated upon the provisions of section 274 of the Act which contained principle of natural justice of the assessee being heard before levying penalty. It also held that mere mistake in the language used or mere non-striking of inappropriate portion could not itself be invalidated the notice. It was held that the entire factual background would fall for consideration in the matter and no one aspect would be decisive.

21. In respect of assessment year 1967-68, the Hon'ble High Court in CIT Vs. Smt. Kaushalya (supra) acknowledged that there could exist a case where vagueness and ambiguity in the notice could demonstrate non-application of mind by the authority and / or ultimate prejudice to the right of opportunity of hearing contemplated under section 274 of the Act. The show cause notice for assessment year 1967-68 was issued even before the assessment order was made and where the assessee had no knowledge of exact charge of Department against him as in the notice not only there was use of word 'or' between the group of cases but there was use of word 'deliberately' also. The Hon'ble High Court held that notice clearly demonstrated non-application of mind on the part of Assessing Officer. The vagueness and ambiguity in the notice had also prejudiced the right of reasonable opportunity to the assessee since he did not know of exact charges he had to face. In this background, quashing of penalty proceedings for assessment year 1967-68 was held to be justified. Applying the said principle laid down by the Jurisdictional High Court, application of mind before issuing the notice under section 274 of the Act has to be considered. The Hon'ble High Court clearly held that where there is vagueness and ambiguity in the notice issued which could demonstrate non-application of mind by the authority which in turn, would ultimately prejudice the right of opportunity of hearing of the assessee as contemplated under section 274 of the Act, then such notice is invalid.

22. Now, coming to the facts of the case before us, wherein search and seizure operations were carried out on Chhoriya group of concerns on 22.08.2008 and declaration of Rs. 11.44 crores was made in the hands of whole group for various years. Consequent to the notices issued under section 153A of the Act for various years, different entities filed the return of income for the

respective years and cumulatively for Rs.13.99 crores as additional income. The income was declared on account of on-money on sale of plots, which was detected from the documents seized during the course of search. Admittedly, Explanation 5A to section 271(1)(c) of the Act is attracted in such cases. However, the case of assessee before us is that the Assessing Officer while completing the assessment proceedings had to be satisfied that the assessee had either concealed the income or furnished inaccurate particulars of income and is liable to levy of penalty under section 271(1)(c) r.w.s. Explanation 5A of the Act. The notice is to be issued to the assessee under section 274 of the Act. Before issuing such notice, satisfaction has to come out from the proceedings going on before the Assessing Officer. The perusal of assessment order passed in the present case reflects that the Assessing Officer while initiating proceedings has recorded satisfaction as to the assessee has furnished inaccurate particulars of income and has also concealed the income. The only source of addition in the hands of assessee is additional income offered by the assessee pursuant to search operations. In such circumstances, it is categorically a case of concealment. However, the Assessing Officer refers to both the limbs of section 271(1)(c) of the Act and the satisfaction recorded in this case suffers from infirmity. Further, even in the notice issued under section 274 of the Act, irrelevant part has not been struck off. While completing penalty proceedings also, the Assessing Officer makes reference to both the limbs i.e. concealment of income and furnishing of inaccurate particulars of income and in the final, levies penalty for concealment of income.

23. However, the question which is raised before us by way of additional ground of appeal is root of start of the proceedings i.e. recording of satisfaction and the issue of notice, which has been challenged by the assessee to be invalid. Applying the ratio laid down by the Hon'ble Karnataka High Court in CIT & Anr. Vs. Manjunath Cotton and Ginning Factory (supra) and CIT Vs. SSA'S Emerald Meadows (supra) and in view of SLP being dismissed, we find merit in the plea of assessee that the satisfaction recorded in the present case to initiate penalty proceedings both for concealment of income and furnishing of particulars of income against additional income offered by the assessee is incorrect. Further, where the assessee is not aware of exact charge against him, the ambiguity in the notice issued under section 274 r.w.s. 271(1)(c) of the Act by not striking of portion which is not applicable, prejudice the right of reasonable opportunity to the assessee, as he was not made aware of exact charge he had to face. It is a clear-cut case of concealment since the assessee had offered additional income pursuant to search carried out at its premises. It is not the case of furnishing of inaccurate particulars of income and hence, the Assessing Officer should have recorded the satisfaction accordingly and issued the notice accordingly.

24. We find no merit on the partial reliance placed upon by the learned Departmental Representative for the Revenue on the decision of Jurisdictional High Court in CIT Vs. Smt. Kaushalya (supra). The Hon'ble High Court has clearly laid down the proposition that the Assessing Officer has to make the assessee fully aware of exact charge of the Department against him. As pointed out, in present case, in the assessment order itself while recording satisfaction for initiating proceedings under section 271(1)(c) of the Act, exact charge of the Department against the assessee is not clear. The Assessing Officer records the satisfaction for initiating penalty proceedings on both the counts i.e. concealment of income and furnishing of inaccurate particulars of income. The Hon'ble Bombay High Court had also upheld the quashing of penalty proceedings for assessment year 1967-68 to be justified on account of

*vagueness and ambiguity in the notice issued. But the Hon'ble High Court further held that where the assessee was fully aware of exact charge of the Department against him, then technical non-striking of certain terms in the notice would not invalidate the proceedings. Where there is default in the first stage of making the assessee aware of exact charge of the Department, then initiation of penalty proceedings are vitiated and the same are to be quashed. The issue of notice under section 274 of the Act on such vagueness and ambiguity makes such notice invalid and proceedings thereafter are to be quashed.*

25. *The Hon'ble Supreme Court in T. Ashok Pai Vs. CIT (supra) had held as under:-*

*"23. Section 271(1)(c) remains a penal statute. The rule of strict construction shall apply thereto. The ingredients for imposing penalty remain the same. The purpose of the Legislature that it is meant to be a deterrent to tax evasion is evidenced by the increase in the quantum of penalty, from 20 per cent under the 1922 Act to 300 per cent in 1985.*

*24. "Concealment of income" and "furnishing of inaccurate particulars" carry different connotations. Concealment refers to a deliberate act on the part of the assessee. A mere omission or negligence would not constitute a deliberate act of suppression very or suggestion falsi."*

*26. Where concealment of income and furnishing of inaccurate particulars of income are two different connotations, then as per provisions of the Act, the satisfaction has to be recorded by the Assessing Officer before initiating penalty proceedings as to under which limb the case of assessee falls. In the present set of facts, the satisfaction as recorded by the Assessing Officer which is evident from the assessment order itself does not establish the case of Revenue against the assessee that it is liable for levy of penalty for concealment under which limb i.e. for concealment of income or for furnishing of inaccurate particulars of income. The notice issued under section 274 of the Act by the Assessing Officer also does not show cause the assessee as to make him aware of exact charge levied against him. In the absence of same, it causes prejudice to the right of reasonable opportunity to be allowed to the assessee before levy of penalty under section 271(1)(c) of the Act. Consequently, penalty notice issued in the present case suffers from infirmities i.e. lack of satisfaction and lack of notice being issued in making the assessee aware of exact charge against him, hence the same is quashed. The penalty proceedings completed pursuant to such notice are vitiated and the same are held to be invalid.*

*27. Now, coming to the merits of case, the assessee had offered additional income on account of on-money on sale of plots. The Assessing Officer had accepted the same and had initiated penalty proceedings under section 271(1)(c) of the Act. The CIT(A) during the course of appellate proceedings relating to section 271(1)(c) of the Act issued enhancement notice to the assessee. Thereafter, he had gone through the seized documents and elaborately referred to them and even reproduced the scanned copies of such documents and comes to conclusion that loans were received from Ratanlal Bafna, but still upholds the penalty levied under section 271(1)(c) of the Act. Once the finding of CIT(A) is that these are loans received from Bafna and are not on-money received on sale of plots, then in cases where penalty proceedings have been initiated on a different footing and the CIT(A) reverses the same and holds the same to be loans received by the assessee, there is*

*change in opinion and basis for levy of penalty for concealment varies. In such circumstances, there is no merit in levy of penalty under section 271(1)(c) of the Act and there is no merit at all in levying the penalty @ 150%. Accordingly, we allow the claim of assessee even on merits. Thus, the grounds of appeal raised by the assessee and additional ground of appeal raised by the assessee are allowed.”*

12. We find that the issue has been decided by the Tribunal in the case of Satish Dondulal Parakh Vs. ACIT (supra). In such case also, penalty proceedings were initiated without mentioning any of the limbs of section 271(1)(c) of the Act and penalty was levied for concealing particulars of income for furnishing inaccurate particulars and the Tribunal held such a proposition was not acceptable. The relevant findings of Tribunal are in para 8 which read as under:-

*“8. We heard both the parties and perused the orders of the Revenue on the issue of initiation and levy of penalty u/s.271(1)(c) of the I.T. Act, 1961. We have considered the submissions made by the Ld. Counsel for the assessee on the legal issue of recording of satisfaction by the AO. In this connection, we proceed to extract the relevant lines from Para 5 of the assessment order and Para No.4 of the penalty order and the same reads as under :*

*Para 5 of the assessment order :*

*“5. ....Penal proceedings under the provisions of section 271(1)(c) of the Act are initiated.” Para 4 of the penalty order :*

*“4. For the reasons recorded in the foregoing paragraphs of this order the undersigned is satisfied that the assessee has concealed particulars of income to the tune of Rs.78,231/- by furnishing inaccurate particulars in respect of the same.....”*

*From the above, it is clear that the AO initiated the penalty proceedings under the provisions of ‘271(1)(c) of the Act’ and levied the same for “concealing particulars of his income by furnishing inaccurate particulars”. Therefore, it is a case where the AO did not have clarity of thought and AO suffered from ambiguity in his mind with regard to the applicable limb of clause (c) of section 271(1) of the Act to the facts of the case. Therefore, we find the penalty order of the AO falls short of legal requirement on the issue of recording of satisfaction. Initiation of penalty proceedings under the provisions of section 271(1)(c) of the Act and levying the penalty on both the limbs of clause (c) of said section is unsustainable in law legally. This view was already taken by the Pune Bench in a series of cases. The manner of initiating and levying of penalty without making reference to the specific limb of clause (c) is unsustainable. AO is under obligation to specify the correct limb at the time of initiation as well as at the time of levy of penalty. Therefore, the penalty levied by the AO and confirmed by the CIT(A) is unsustainable on technical grounds. Further, this view of ours get strength by the judgment of Hon’ble jurisdictional*

*High Court in the case of CIT Vs. Shri Samson Perinchery as well as the judgment of Hon'ble Karnataka High Court in the case of CIT Vs. Manjunatha Cotton and Ginning Factory (supra). Accordingly, the grounds raised by the assessee are allowed."*

13. Similar is the proposition laid down in Praj Industries Ltd. Vs. DCIT (supra). In the facts of the case before the Tribunal in Praj Industries Ltd. Vs. DCIT (supra), penalty proceedings were initiated for concealing particulars of income and was levied for furnishing inaccurate particulars of income and the Tribunal in such case held as under:-

*"9. We heard both the parties on this legal issue and perused the orders of the Revenue on the issue of initiation and levy of penalty u/s.271(1)(c) of the I.T. Act, 1961. We have considered the submissions made by the Ld. Counsel for the assessee on the additional grounds (legal in nature). relating to recording of satisfaction by the AO. In this connection, we proceed to extract the relevant lines from Para 3 of the assessment order and Para No.5 of the penalty order and the same reads as under :*

*"Para 3 of the assessment order :*

*3. During search action, assessee has made disclosure of additional income of Rs.3,91,04,244/-. Subsequently, notice u/s.148 was issued in response assessee filed return declaring disclosure of Rs.3,91,04,244/- declared during search action.*

*Thus, to this extent, assessee has concealed the particulars of income. It is pertinent to note here that said income has been disclosed by the assessee due to search action only. Had there been no search action, this income would not have been disclosed by the assessee and the same would have escaped assessment. Therefore, penalty proceedings u/s.271(1)(c) of the Act is initiated separately.*

*Para 5 of the penalty order :*

*5. . . . . Thus, in view of the above, I am convinced that the assessee has concealed income of Rs.5,01,04,244/- by furnishing inaccurate particulars and made itself liable for levy of penalty u/s.271(1)(c) of the I.T. Act, 1961. I, therefore, direct the assessee to pay a sum of Rs.1,68,65,088/- by way of penalty u/s.271(1)(c) of the I.T. Act, 1961, which is equal to sum of tax sought to be evaded, . . . . ."*

*From the above, it is clear that the AO initiated the penalty proceedings for the offence of 'concealing the particulars of income' and levied the same for "furnishing inaccurate particulars". Therefore, it is a case where the AO did not have clarity of thought and AO suffered from ambiguity in his mind with regard to the applicable limb of clause (c) of section 271(1) of the Act to the facts of the case. Therefore, we find the penalty order of the AO falls short of legal requirement on the issue of recording of satisfaction. Initiation of penalty proceedings is made for one limb and the penalty was levied for other limb. Such penalty order is unsustainable in law legally. This view was already taken*

*by the Pune Bench in a series of cases. The manner of initiating and levying of penalty without making reference to the specific limb of clause (c) is unsustainable. AO is under obligation to specify the correct limb at the time of initiation as well as at the time of levy of penalty. Therefore, the penalty levied by the AO and confirmed by the CIT(A) is unsustainable on technical grounds. Further, this view of ours get strength by the judgment of Hon'ble jurisdictional High Court in the case of CIT Vs. Shri Samson Perinchery as well as the judgment of Hon'ble Karnataka High Court in the case of CIT Vs. Manjunatha Cotton and Ginning Factory (supra). Accordingly, the additional ground No.1 raised by the assessee is allowed.*

*Considering the same, we find adjudication of other grounds raised by the assessee becomes an academic exercise. Therefore, the said grounds are dismissed as such."*

14. Now, coming to the facts of present case, first penalty proceedings have been initiated in respect of additional income offered. The Assessing Officer had recorded satisfaction that the assessee has concealed its income but had levied penalty on account of concealment of income by furnishing inaccurate particulars of income. Such an order imposing concealment penalty is not sustainable for not coming to the conclusion as to the proper limb, which has not been satisfied. In respect of second set of penalty i.e. unexplained investment in jewellery and on account of on-money received, penalty proceedings were initiated without mentioning the limb which has not been satisfied by the assessee and penalty has been levied for violation of both the limbs of section and such order imposing concealment penalty is not sustainable and hence, the same is held to be invalid in law.

15. The learned Departmental Representative for the Revenue has placed reliance on the ratio laid down by the Hon'ble High Court of Karnataka in CIT & Anr. Vs. M/s. Manjunatha Cotton and Ginning Factory (supra), which proposition has already been applied by us in the case of Kanhaiyalal D. Jain Vs. ACIT (supra) and consequently, we find no merit in the stand of Revenue in

this regard. Hence, we direct the Assessing Officer to delete penalty levied under section 271(1)(c) of the Act in all the years under appeal.

16. The facts and issues in ITA Nos.742/PUN/2016 to 747/PUN/2016 are identical to the facts and issues in ITA Nos.737/PUN/2016 to 740/PUN/2016 and our decision in ITA Nos.737/PUN/2016 to 740/PUN/2016 shall apply *mutatis mutandis* to ITA Nos.742/PUN/2016 to 747/PUN/2016.

17. In the result, all the appeals of assessee are allowed.

Order pronounced on this 15<sup>th</sup> day of May, 2018.

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 15<sup>th</sup> May, 2018.  
GCVSR

**आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-12, Pune;
4. The CIT, Central, Nagpur;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune