

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCHE, INDORE  
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

ITA Nos. 516/Ind/2017, 1341, 1342,602 & 603/Ind/2016  
AYs:2007-08, 2009-10,2010-11,2011-12 & 2012-13

<b>Keti Sangam Infrastructure (I) Ltd. Indore</b>	<u>बनाम/</u> <b>Vs.</b>	<b>Dy. Commissioner of Income tax (Central), Indore</b>
<b>(Appellant )</b>		<b>(Respondent)</b>

ITA Nos. 1343 & 601/Ind/2016  
A.Ys. 2010-11 & 2011-12

<b>Keti-T Construction (India) Ltd. Indore</b>	<u>बनाम/</u> <b>Vs.</b>	<b>Dy. Commissioner of Income tax (Central), Indore</b>
<b>(Appellant )</b>		<b>(Respondent)</b>

ITA Nos. 513/Ind/2017, 1344/Ind/2016 & 514/Ind/2017  
A.Ys. 2007-08, 2009-10 & 2010-11

<b>Kalyan Nav Nirman Ltd., Indore</b>	<u>बनाम/</u> <b>Vs.</b>	<b>Dy. Commissioner of Income tax (Central), Indore</b>
<b>(Appellant )</b>		<b>(Respondent)</b>

ITA No. 512/Ind/2017  
A.Y. 2010-11

<b>Kalyan Marble &amp; Granite Limited Indore</b>	<u>बनाम/</u> <b>Vs.</b>	<b>Dy. Commissioner of Income tax (Central), Indore</b>
<b>(Appellant )</b>		<b>(Respondent)</b>

ITA No. 515/Ind/2017  
A.Y. 2007-08

<b>M/s Kalyan Iron &amp; Steel Pvt. Ltd.</b>	<b>बनाम/</b>	<b>Dy. Commissioner of Income tax (Central), Indore</b>
<b>(Appellant )</b>	<b>Vs.</b>	<b>(Respondent)</b>

**Appellant by Shri Ajay Tulsian & Amitesh Jain Shri Kapil Shah**

**Respondent by Shri Satish Solanki**

<b>Date of hearing</b>	<b>30.05.2018</b>
<b>Date of pronouncement</b>	<b>27.06.2018</b>

**आदेश / O R D E R**

**PER BENCH**

This bunch of 12 appeals at the instance of different assessees captioned above pertaining to the assessment years 2007-08, 2009-10, 2010-11, 2011-12 & 2012-13 is directed against different orders of the Commissioner of Income Tax (Appeals)-III, Indore, dated 25.4.2017, 24.10.2016, 22.9.2016, 31.3.2016, 30.3.2016, 21.9.2016, 30.9.2016, 28.4.2017, 22.9.2016, 28.4.2017, 27.4.2017 and 27.4.2017 arising out of different orders u/s 271(1)(c)/271AAA of Income Tax Act (in short referred as 'Act') Act framed by the DCIT (Central), Indore.

2. Since common issues are involved, these appeals were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. Briefly stated, the facts, as culled out from record, are that search and seizure operations u/s 132 of the Act were carried out on 5.5.2011 at the business as well as residential premises of Keti Kalyan Group of Indore comprising of various companies, business concerns and individuals. During the course of search Mr. Tikamchand Garg, who is also a director and share holder in various group companies on behalf of the business concerns and individuals, surrendered unaccounted income of Rs. 51 crore and offered it for taxation and also gave post dated cheques of Rs. 7.51 crores towards taxes. Subsequently, assessment proceedings u/s 153A read with section 143(3) of the Act were carried out in the group cases after issuing necessary notices as required under the law. The unaccounted income was offered in various group cases as well as individuals. The assessments were completed with minor additions and in general income disclosed in return was accepted by the Assessing Officer. Subsequently penalty proceedings u/s

271(1)(c)/271AAA of the Act were initiated on the undisclosed income offered to tax by the group concerns/individuals. In the instant 12 appeals the assessee has challenged the findings of the learned Commissioner of Income Tax (Appeals) confirming the following penalties levied by the Assessing Officer u/s 271(1)(c)/271AAA of the Act :-

Name of assessee	A.Y.	Penalty u/s 271(1)(c )	Amount Rs.
Kalyan Iron	2007-08	-do-	3,67,000
Kalyan Nav Nirman	2007-8	-do-	6,73,200
Kalyan Nav Nirman	2009-10	-do-	56,76,330
Kalyan Nav Nirman	2010-11	-do-	9,66,510
Kalyan Marble & Granite	2010-11	-do-	6,47,000

Name of assessee	A.Y.	Penalty u/s 271(1)(c )	Amount Rs.
Keti-T Construction	2010-11	-do-	72,81,800
Keti Sangam Infrastructure	2010-11	-do-	85,43,360
Keti Sangam Infrastructure	2009-10	-do-	6,28,330
Keti Sangam Infrastructure	2007-08	-do-	3,80,020

Name of assessee	A.Y.	Penalty u/s 271AAA	Amount Rs.
Keti-T Construction	2011-12	-do-	43,94,610
Keti Sangam Infrastructure	2011-12	-do-	25,14,100
Keti Sangam Infrastcucture	2012-13	-do-	25,07,250

4. We would first take up 9 appeals bearing ITA Nos. 1341/Ind/2016, 1343/Ind/2016, 1342/Ind/2016, 516/Ind/2017, 515/Ind/2016, 513/Ind/2017, 1344/Ind/2016, 514/Ind/2017 and 512/Ind/2017 relating to penalty u/s 271(1)(c) of the Act. On going through the grounds of appeal filed by different assessees we find that they are common and the assessee has challenged the legality of the notices issued u/s 274 read with section 271(1)(c) of the Act and has also challenged on merits the penalty levied u/s 271(1)(c) of the Act. For the sake of convenience, we reproduce the grounds taken by the assessee in ITA No. 516/Ind/2017 (A.Y. 2007-08) hereunder, which are common in the remaining 8 appeals :-

*“(i) That, the learned CIT(A) erred in upholding the action of the A.O. of levying penalty u/s 271(1)(c) of Rs. 3,80,020/- in respect of the income of Rs. 11,29,000/- declared by the appellant*

*company in the return of income filed u/s 153A r.w.s. 139 in response to the notice issued u/s 153A. That on the facts and in the circumstances of the case and in law the penalty levied is uncalled for and bad in law and it is prayed that the penalty may very kindly be deleted.*

*(ii) That, the learned CIT(A) erred in upholding the penalty levied u/s 271(1)(c) overlooking the fact that neither the requisite conditions as envisaged by law for the purpose of levying this penalty are present/fulfileld in this case nor the order imposing penalty u/s 271(1)(c) is a speaking order.*

*(iii) That, the learned CIT(A) erred in holding that the provisions of explanation 5A to section 271(1)(c) are applicable in this cae. That on the facts and in the circumstances of the case, the said observation is wrong and uncalled for. The learned CIT(A) ought not to have confirmed the penalty.”*

5. We would first take up the legal ground through which it is commonly pleaded that the alleged notice issued u/s 274 read with section 271(1)(c) of the Act is bad in law as the Assessing Officer has not specified the charge against the assessee as to whether the

penalty has been levied for concealment of particulars of income or furnishing inaccurate particulars of income.

6. Before us, the learned counsel for the assessee submitted that the penalty proceedings were initiated without specifying any charge and the notices u/s 274/271(1)(c) of the Act were issued on both the counts and without specifying any limb i.e. concealment of income or furnishing of inaccurate particulars of income. He further submitted that blanket penalty proceedings were initiated in all the cases u/s 271(1)(c). It was merely stated in the assessment orders that penalty proceedings are initiated u/s 271(1)(c) without specifying any charge. The penalty notices issued u/s 274 r.w.s. 271(1)(c) of the Act were also issued in the cyclostyled format without striking off either of the two charges i.e. '*concealment of income*' or '*furnishing of inaccurate particulars*'. He emphasized that even in the cases where penalty proceedings were initiated u/s 271AAA (i.e. for AYs 2011-12 & 2012-13), notices akin to the notices issued u/s 271(1)(c) were. Thus the penalty proceedings were initiated without specifying any particular or specific charge against the assessee either in the assessment order or even in the

penalty notice. He submitted that it is important to point out that no charge either of '*concealment of income*' or of '*furnishing of inaccurate particulars*' was made in the assessment order in all these cases. A perusal of the assessment order will show that it was simply stated that penalty proceedings are initiated u/s 271(1)(c). He submitted that a perusal of the penalty show cause notices issued u/s 274 of the Act will show that "..... *have concealed the particulars of income or furnished inaccurate particulars of such income*" thus the charge against the assessee for levy of penalty was not specific. It is now a settled proposition that when the charge itself is not specific and is vague, penalty cannot be levied". The learned counsel for the assessee further submitted that it is a settled proposition that concealment of income and furnishing inaccurate particulars of income carry different connotations. To support this plea, the learned counsel for the assessee relied upon the decision of the Hon'ble Supreme Court in the case of T Ashok Pai V/s CIT (2007) 292 ITR 11 (SC). Further it was submitted by the learned counsel for the assessee that the assessee should be aware of the specific charge which he has to meet in the penalty proceedings. It is settled proposition that where the charge for

levying penalty is not specific, the notice issued u/s 271(1)(c) is bad in law as it does not specify as to under which limb of section 271(1)(c) of the Act penalty proceedings have been initiated. When the notice does not specify the charge for levy of penalty, it has been held in many cases by various Courts that penalty cannot be levied. For this proposition, the learned counsel for the assessee placed reliance on the following decisions:-

- (i) **CIT and Anr. V/s Manjunath Cotton & Ginning Factory (2013) 359 ITR 565 (Karn.)** copy enclosed at page no. **01 to 27** of case law paper book.
- (ii) Following this decision the Honourable **Karnataka High Court in CIT V/s SSA'S Emerald Meadows ITA No. 380/2015 dated 23.11.2015** has dismissed the appeal of the revenue, where the Honourable Tribunal had allowed the appeal of the assessee holding that the notice issued by the AO u/s 274 r.w.s. 271(1)(c) of the Act to be bad in law as it does not specified under which limb of section 271(1)(c) of the Act under which it has been initiated. (copy enclosed at page no. **28 to 31** of case law paper book)
- (iii) The Honourable Supreme Court has dismissed the Special Leave Petition filed by the department against the above decision of Honourable Karnataka High Court in this case of M/s SSA'S Emerald Meadows. The copy of the order of Honourable Supreme Court dated 05.08.2016 is enclosed at page no. **32**.
- (iv) **Even in the matter of search cases and penalty levied under Explanation 5A to section 271(1)(c)**, following the decision of Honourable Karnataka High Court in the case of Manjunath Cotton (Supra), it has been held that the show cause notice u/s 274 was defective as it does not spell out

the grounds on which the penalty is sought to be imposed and consequently penalty imposed was cancelled. **Mahabir Prasad Agrawal V/s ACIT Kolkatta in IT No. 738 & 739/Kol/2013 dated 15.01.2016** copy enclosed at page no. **33 to 39** of case law paper book.

The facts of this case are identical with the facts of the present appeals as in these appeals the show cause notices issued before imposing penalty did not specified as to whether the assessee is guilty of having 'furnished inaccurate particulars of income' or of having 'concealed particulars of such income'.

- (v) **The Honourable ITAT Mumbai Bench in Meharjee Cassinath Holdings Pvt. Ltd. V/s ACIT Circle 4(2), Mumbai in ITA No. 2555/Mum/2012 vide order dated 28.04.17** has also held that the notice issued u/s 274 by the AO is untenable as it suffers from the vice of non application of mind and deleted the penalty levied u/s 271(1)(c) copy enclosed at page no. **40 to 54** of case law paper book.
- (vi) **Recently the Honourable Jurisdictional ITAT Indore Bench in the case of Smt. Shruti Garg and Others which also belong to Kalyan Group in ITA No. 988 to 1005/Ind/2016 vide order dated 28.06.2017 following the above referred proposition held by the Honourable Supreme Court in T Ashok Pai V/s CIT (2007) 292 ITR 11 (SC) and in CIT V/s SSAS Emerald Meadows (2016) 73 Taxmann.com 248 (SC) has also held the penalty levied u/s 271(1)(c) as unsustainable in law as no specific charge was levied in the penalty show cause notice. The Honourable ITAT has drawn support from various other case laws as well. Copy of the said order is enclosed at page no. 78 to 100 of the case law paper book and specific reference is invited to Para no. 8 to 8.5. on internal page 17 to 22 of the order (page no. 94 to 99 of the case law paper book).**

There are plethora of recent judgements in support of the above contention of the appellant group wherein it is held that no penalty can be levied when there is no specific charge specified in the notice u/s 274 r.w.s. 271(1)(c). Some of the cases are mentioned hereunder:

- (vii) **Principal CIT V/s Smt. Baisetty Revathi of Honourable Andhra High Court dated 13.07.2017**
- (viii) **CIT V/s Shri Samson Perinchery of Honourable Bombay High Court dated 05.01.2017**
- (ix) **Aditya Chemicals Ltd. vs. ITO(2017) 51 CCH 0643(Deli-Trib)**
- (x) **ABR Auto(P) Ltd. vs. ACIT (2017) 51 CCH 0477(Deli-Trib)**
- (xi) **Sujata Bhardwaj vs. DCIT (2017) 190TTJ 406 Jodhpur Tri.**

7. On the other hand, the learned DR vehemently argued supporting the orders of the lower authorities and submitted that the assessee has surrendered undisclosed income which was not offered to tax in earlier assessment years and, therefore, the penalty has been rightly levied. He, however, could not controvert the fact that the alleged notice was issued without specifying the particular limb as to under which the penalty proceedings have been initiated.

8. We have heard both the parties, perused the material available on record and have also gone through the case laws cited by the learned counsel for the assessee. In this bunch of 9 appeals relating to different assessees which is a part of group cases under which search was carried out on 5.5.2011 u/s 132 of the Act, penalties were initiated u/s 271(1)(c) of the Act. The common legal ground taken by all these assessees is with regard to challenging the

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legality and validity of the notice u/s 271(1)(c) of the Act. It is admitted by both the parties that similar notices have been issued in all these cases. We reproduce below the notice issued in the case of K.T. Sangam Infrastructure (I) Limited dated 31.1.2014.

**“Office of the Deputy Commissioner of Indore Tax (Central), Indore  
Aavakar Bhawan Main Building, Room No-102, Opp-White Church: A.B Road, Indore**  
PAN: AADCKOI29Q Dated- 3/1/2014

To,

**Ms Ketu Sangam infrastructure (I) Ltd Vidhya Deep,  
15/3, Manoramaganj Indore (M.P)**

Sir,

**NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(c) OF THE INCOME TAX ACT, 1961**

Whereas in the course of proceedings before me for the A.Y. 2009-10 it appears to me that you :-

" have without reasonable cause failed to furnish the return of income which you were required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian Income Tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income Tax Act, 1961, No.....dated..... or have without reasonable cause failed to furnish it within the time allowed and in the manner required by the said section 139(1) or by such notice.

• have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income Tax Act, 1922 or under section 142(1)/143(2) of the Income Tax Act, 1961, No.....dated.....

have concealed the particulars of your income or furnished inaccurate particulars of such income,

You are hereby requested to appear before me at 3:30 p.m on 20/02/2014 and show cause why an order imposing a penalty on you should not be made under section 271(1)(c) of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 271(1)(c).

Yours faithfully,

\. -----

(Ram kumar Yadava)

Deputy Commissioner of Income Tax (Central), Indore “

9. From the perusal of the above notice we find that the Assessing Officer has initiated the penalty proceedings mentioning both the reasons *“have concealed the particulars of income or furnished inaccurate particulars of income “* which shows that the Assessing Officer was not sure of the specific charge for which penalty has been levied. In such a situation whether the alleged notice is valid or not needs to be examined in the light of various judicial pronouncements which have dealt with the very same issue.

10. We shall first go through the decision of the coordinate Bench in the case of Narayana Heights & Towers; ITA No. 1033/JP/2016 order dated 20.2.2017 which has decided this very issue in favour of the assessee by following the judgment of the Hon'ble Karnataka High Court in the case of Manjunath Cotton & Ginning Factory; 359 ITR 565 by observing as under :-

*“3.2. We have heard the rival contention, perused the material available on record and gone through the orders of the authorities below. For the sake of clarity the relevant contents of the Assessment Order are reproduced as under: “Penalty u/s 271(1)(c) is separately as assessee has concealed the*

*income.” Relevant contents of the Penalty Order are reproduced as under:-*

*“As the assessee had not filed any appeal against order of the AO and it appears that the assessee is satisfied with the order passed by the AO.*

*Therefore, it appears that the assessee has nothing to say and has no objection regarding imposing the penalty u/s 271(1)(c) of I.T. Act, 1961.*

*Therefore, I impose a penalty of equal to 100% of tax sought to be evaded on account of the above acts of the assessee of Rs. 34,05,436/- i.e. 100% tax*

*evaded.” In the light of the above, we need to examine whether assessment*

*order and the penalty order comply with the provisions of section 271(1)(c)*

*of the Act. We find that on page 3 of the assessment order, the assessing*

*order, AO observed as under:-*

*“As the assessee has concealed/furnished the inaccurate particulars of income therefore, penalty u/s 271(1)(C) is also initiated.” 3.3. As per section*

*271 (1)(c), the assessing officer is empowered to impose penalty if in the course of any proceedings under this Act is satisfied that any person has*

*concealed the particulars of his income or furnished inaccurate particulars of such income. From the above provision it is clear that there has to be a*

*specific satisfaction by the Assessing Officer that the assessee is guilty of concealing the particulars of his income or furnishing inaccurate particulars*

*of such incomes. 3.4. From the above, it is clear that the assessing officer should give a specific finding. In the present case, in the assessment order as noted above the assessing officer has stated that the assessee has concealed/furnished the inaccurate particulars of income. Therefore, the penalty under Section 271(1) (c) was also initiated, from this it can not be inferred whether there is specific charge of concealing the particulars of income or furnished the inaccurate particulars of such income Law is well settled that the assessing officer has to come to a definite satisfaction whether the assessee has concealed the income of particulars or furnished the inaccurate particulars of income. The Hon'ble Karnataka High Court in the case of CIT and Another Vs. Manjunatha Cotton and Ginning Factory, 359 ITR 565(Kar.) has held that the notice u/s 274 of the Act should specifically state as to whether penalty is being proposed for concealment of particulars of income or inaccurate particulars of income. In the present case notice under section 274 dated 25/3/2015 enclosed at paper book page 16 reads as under: "Penalty Notice Under Section 274, Read with Section 271 of the IT Act. 1961" Whereas in the course of proceedings before me for the Assessment Year 2012-13. It appears to me that you have:- Read With Section 271(1)(c) concealed particulars of income or furnished inaccurate*

*particulars of income.” Therefore, there is no specific charge by the Assessing Officer. Further, it is noted that the Assessing Officer in penalty order (as noted hereinabove) has proceeded on the basis of the assumption that the assessee is satisfied with the assessment order. Therefore, it appears that the assessee has nothing to say and has no objection regarding the imposing of the penalty under section 271(1)(c) of the Act. In our considered view, the assessing officer was not justified in imposing the penalty on this basis, the action of the assessing officer is contrary to the provision of law. The Id. CIT (A) without considering the binding precedents proceeded to hold that the penalty order can not be invalidated on account of any mistake or affect or omission if anywhere in view of the provision of section 292B of the Act. This finding of the Ld. CIT (A) is contrary to the judgment of the Hon’ble Karnataka High Court rendered in the case of CIT and Another Vs. Manjunatha Cotton and Ginning Factory, 359 ITR 565(Kar.) (supra). The Hon’ble Karnataka High Court has held as under:- “ 63. In the light of what is stated above, what emerges is as under : (a) Penalty under section 271(1)(c) is a civil liability. (b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities. (c) Willful concealment is not an essential ingredient for attracting civil liability. (d) Existence of conditions stipulated in section*

*271(1)(c) is a sine qua non for initiation of penalty proceedings under section 271. (e) The existence of such conditions should be discernible from the assessment order or the order of the appellate authority or the revisional authority. (f) Even if there is no specific finding regarding the existence of the conditions mentioned in section 271(1)(c), at least the facts set out in Explanation 1(A) and 1(B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision. (g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under section 271(1)(c) is a sine qua non for the Assessing Officer to initiate the proceedings because of the deeming provision contained in sub-section (1B). (h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Income-tax (Appeals) and the Commissioner. (i) The imposition of penalty is not automatic. (j) The imposition of penalty even if the tax liability is admitted is not automatic. (k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry*

*concluded by the authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the Assessing Officer in the assessment order. (l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bona fide, an order imposing penalty could be passed. (m) If the explanation offered, even though not substantiated by the assessee, but is found to be bona fide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed. (n) The direction referred to in Explanation 1(B) to section 271 of the Act should be clear and without any ambiguity. (o) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the assessing authority. Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income (q) Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law. (r) The assessee*

*should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee. (s) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law. (t) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings. (u) The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on the merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared as invalid in the penalty proceedings." In the light of the above judgment we are unable to affirm the action of the authorities below. As the initiation of penalty under section 271(1)(c) vide notice 274 of the Act is not in conformity with the requirement of the law. Thus, the Penalty order can not be sustained in the eyes of the law. Same*

*deserves to be quashed. Hence, Ground no. 1 the assessee's appeal is allowed."*

11. We further observe that this very same issue came up before the ITAT, Indore Bench, in the cases of various assessees of Keti/Kalyan group wherein search was carried out on 5.5.2011 vide ITA No. 988/Ind/2016 and others in the case of Shruti Garg and others. This very legal issue regarding the notice u/s 274 read with section 271(1)(c) of the Act came up before the coordinate Bench wherein the same facts i.e. the cyclostyled format of the notice without striking off either of the two charges i.e. concealment of income or furnishing of inaccurate particulars of income were involved and this issue was decided in favour of the assessee and the penalties u/s 271(1)(c) of the Act were deleted observing as follows :-

*8. We have considered the facts] perused the material on record, and gone through the assessment order and penalty order. A perusal of the penalty order reveals that the AO has rejected the contentions of the assessee on the basis that the undisclosed income is declared as result of search was not recorded in books of accounts before the date of search. We find that the penalty notices under section 274 read with section 271 (1)(c) were*

*issued in the cyclostyled format without the striking off either of the two charges i.e. "concealment of income" or "furnishing of inaccurate particulars". Thus, the penalty proceedings were initiated without specifying any particular or specific charge against the assessee in either the assessment order or even the penalty to point out that no charge either of "concealment of income" or "furnishing of inaccurate particulars" was made in the assessment orders in all these cases, Further perusal of the assessment order reveals that it is simply stated that penalty proceedings are initiated u/s. 271 (1)(c). Similarly the perusal of the penalty show cause notice is issued under section 274 read with section 271 (1)(c) showed that it was mentioned ... "Have concealed the particulars of income or furnished inaccurate particulars of such income" . Thus, we find that the charge against the assessee for levy of penalty was not specific. It is now a settled proposition that when the charge itself is not a specific and is vague, penalty cannot be levied. As held by the Hon-ble Supreme Court in the case of T. Ashok Pai v . CIT (2007) 292 ITR 11 (SC) wherein it was laid down that it is a settled proposition that concealment of income . and furnishing inaccurate particulars of income carry different - connotation.-It is settled proposition that where the charge for levying penalty is not specific, the notice issued under section 271 (1)(c) is bad in law as it does not specify by which limb of section 271 (1)(c) of the Act under which it has been initiated. When the notice does not specify the charge for Levy of penalty, it has been held that the penalty cannot be levied.*

*8.1. Further reliance in the case of CIT v. Manjunath Cotton Ginning Factory [2013] 359 ITR 565 (Karnataka) ( copy filed Paper Book Page No. 01-27) is placed whereas it was observed in para 59 that the practice of the Department sending a printed form where all the grounds mentioned in Section 271 are mentioned would not satisfy the requirement of law when the consequences of the assessee not rebutting the initiated presumption is*

*serious in nature and he had to pay penalty from 100 to 300 of the tax liability. As the said provisions have to be held to be strictly construed, notices issued under section 274 should satisfy the grounds, which he has to meet specifically. Otherwise, principle of natural justice is offended if the show cause is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.*

*8:2. This decision was further followed by the Hon'ble Karnataka High Court in the case of CIT v. SSA'S Emerald Meadows [I.T.A. No. 380/2015 dated 23<sup>rd</sup> November 2015] the Hon'ble High Court has dismissed the appeal of the Revenue by observing that The Tribunal had allowed the appeal of the assessee holding the notice issued by the Assessing Officer under section 274 read with section 271(1)(c) of Income Tax Act, 1961 to be bad-in-law as it did not specify which limb of Section 271 (1)(e) of the Act, the penalty proceedings had been initiated i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars. The Tribunal, while allowing the appeal of the assessee, had relied on the decision of the Division Bench of this Court rendered in the case of CIT vs. Manjunath Cotton Ginning Factory [2013] 359 LTr 565. ( Copy filed P8-28 to 31) It was further pointed out that SLP filed by the Department against this decision was dismissed by Hon'ble Supreme Court on 05-08-2016 reported in CIT v. SSA'S Emerald Meadows [2016] 73 taxmann.com 248 (SC). The learned counsel also submitted that even in the matter of search case where penalty is levied under Explanation SA to section 271 (1)(c), following decision of CIT v. Manjunath Cotton Ginning Factory [2013] 359 ITD 55 (Karnataka) , it has been held that the show cause notice under section 274 was defective as it does not spell out the grounds on which the penalty is sought to be imposed and consequently, penalty*

*imposed was cancelled. The case law in the case: of Mahabir Prasad Agarwal v . ACIT Kolkatta Tribunal in [LT.A. No. 738 & 739/Kol/2013 dated '15-10-2016] (P8-33 to 39) also support the. case of the assessee as the facts are identical with the facts of the present appeals as in these appeals the show cause notices issued before imposing penalty did not specified whether as to the assessee is guilty of having furnished inaccurate particulars of income or of having concealed particulars of such income. We may also draw support for the recent decision of coordinated bench Mumbai Tribunal in the case of Meharjee Cassinath Holdings Pvt. Ltd. v. ACIT Circle 4(2) in I.T.A. No. 2555/ Mum/2012 order dtd. 28.04.2017 [PB- 40-54] has also held that the notice issued u/ s. 274 by the AO is untenable as it suffers from the vice of non-application of mind. In this case though the AO recorded in the assessment order that penalty proceedings under section 271 (l )(c) are to be initiated for furnishing of inaccurate partioufar s of income, however, in the notice ujs. 274 both the limbs of section 271 (l)(c) were reproduced in the proforma notice and the relevant clauses was not struck off. Whereas in the case of the assessee no specific charges were levied in the assessment order as well as penalty show cause notice.*

*8.3. In this regard, our view is also supported by the decision of Hon 'ble Supreme Court in case of CIT v. Suresh Chandra Mittal [2000] 251 ITR 9(SC), wherein the Supreme Court has upheld the decision of the Hon 'ble Madhya Pradesh High Court CIT in the case of Suresh Chandra Mittal [2000] 241 ITR 124 (MP), where in similar < circumstances it was held that the initial burden lies on the revenue to establish that the assessee had concealed the income or had furnished inaccurate particulars of such income. Thereafter, in so far as the manner in which the statutory notice was required to be issued, the Honble Court*

*concluded as: Notice u/s. 274 of the Act should be specifically state the grounds mentioned in section 271(1)(c), i.e. whether it is for concealment of income or for furnishing of incorrect particulars of income.*

*8.4. The Hon'ble Supreme Court in Dilip N. Shroff v. JCIT [2007J 291 ITR 519 (SC), has observed that while sending the notice under section 274 r/ro section 271, in the standard format, the Assessing Officer should delete the inappropriate words or paragraphs, otherwise, it may indicate that the Assessing Officer himself was not sure as to whether he had proceeded on the basis that the assessee had concealed his income or had furnished inaccurate particulars of income. We find that the AO has not struck down the relevant word/sentence in the cyclostyled proforma of penalty show cause notice; therefore, the AO "was not sure that on what ground he is levying the penalty.*

*8.5. Considering above facts and circumstances and relying judicial precedents discussed above, we are of the considered opinion that specific cl1arge was levied in penalty show cause notice nor penalty is penalty levied under section 271 (l)(c) is not sustainable in law, as no warranted on facts and law as discussed above, hence, it is cancelled. Accordingly, all 19 appeals of six assesseees are allowed”.*

12. Further we find that the Coordinate Bench Delhi in the recent decision pronounced on 26.3.2018 in the case of Ravine & Associates Private Limited v. ACIT (2018) 64 (Tri) 149 had an

occasion to decide an identical issue wherein it was held as follows :-

*“11.8 We have considered the rival submissions and perused the material on record. It is evident from the notices u/s 274 r.w.s. 271 of the Act dated 27.12.2007 and 6.3.2012 that the AO has not specifically specified under which limb of section 271(1)(c) of the Act, the penalty proceedings had been initiated by him, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Hon’ble High Court of Karnataka in the case of CIT v. Manjunatha Cotton & Ginning Factory reported in 359 ITR 565 (Kar) has inter-alia held as under:*

*“(p) Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1)(c) i.e., whether it is for concealment of income or for furnishing of inaccurate particulars of income (q) Sending printed form where all the ground mentioned in section 271 are mentioned would not satisfy requirement of law.”*

*11.9 The above said decision of Hon’ble High Court of Karnataka in the case of CIT v. Manjunatha Cotton & Ginning Factory (supra) has been followed by the Hon’ble High Court of Karnataka in the case of CIT v. SSA’s Emerald*

*Meadows 73 taxmann.com 241 and the relevant portion is as under: "2. This appeal has been filed raising the following substantial questions of law: 1 Whether, omission if assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case? 2 Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under Section 274 r.w.s. 271(1)(c) is bad in law and invalid despite the amendment of Section 271(1B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same? 3 Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued under Section 274 without taking into consideration the assessment order when the assessing officer has specified that the assessee has concealed particulars of income?" 3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (for short*

*'the Act') to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of CIT v. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565/218 Taxman 423/35 taxmann.com 250 (Kar.). 4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed. 11.10 The SLP filed by the revenue against the above judgment has been dismissed by Hon'ble Supreme Court of India and the decision of Hon'ble Supreme Court is reproduced here in below: "1 Delay condoned 2 We do not find any merit in this petition. The special leave petition is accordingly dismissed. 3 Pending application, if any stands disposed off." 11.11 Therefore, in the circumstances and on the facts of the present case and in light of the judgments of the Hon'ble Karnataka High Court and the Hon'ble Supreme Court reproduced hereinabove, we are of the considered view that the Assessing officer is required to specify as to under which limb of section 271(1)(c) of the Act, the penalty proceedings had been*

*initiated, i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars of income. From the perusal of the notice u/s 274 r.w.s. 271 of the Act, Assessing officer has not specified as to under which of the two limbs the penalty is imposable. In the circumstances and facts of the case, the penalty proceedings so initiated by the AO are bad in law and accordingly the penalties so initiated are ordered to be cancelled and the order/s of the learned CIT (A) are reversed. Thus, the legal ground raised is decided in favour of the assessee and is allowed. 11.12 Moreover, even on merits, the reason which led the authorities below to levy the impugned penalty is that there was no voluntary declaration by the assessee. We have already held, while disposing off Grounds 1 to 1.4 and Grounds 3 to 3.6 in ITA Nos. 1004/Del/2011 and 1005/Del/2011 for assessment years 2004-05 and 2005-06, that the income declared by the assessee was voluntary and the nature of income was not unexplained investment under section 69 of the Act. In view of the above findings, we are of the considered view that penalty is not leviable even on the facts of the case of the assessee company and it is not a case where there was any detection of income by the authorities below prior to the declaration of income by the assessee. On the contrary, the reasons recorded establish that income was sought to be assessed on the*

*basis of declaration of income by the assessee company. 11.13 The Third Member of the ITAT in the case of Addl. CIT vs. Premchand Garg reported in 123 TTJ 433 has held as under: "19. The fact, whether there is concealment of income or whether inaccurate particulars thereof have been furnished is essentially a question of fact. To find out that or to decide which, all the attending circumstances have to be taken into account. The question is at what point of time this material fact is to be found out. Generally it is with reference to the return of income and at that time it is to be seen whether there was concealment of income from or furnishing of inaccurate particulars thereof in the return of income chargeable to tax. But there may be cases, where an income is not declared in the return or the particulars of income shown inaccurately in the return but assessee on realization of mistake, omission or misdeed rectifies that and corrects himself and cleans his breast can he still be accused of concealment though in the return there has been the omission. By the time the AO takes up the issue and comes across the information in his possession, if the assessee makes up the deficiency and offers the income or furnishes accurate particulars he, in our opinion, cannot be held guilty of concealment of income or furnishing of inaccurate particulars of his income. Any action rectified relates back to original act and*

*to the date and time of filing the return. When the AO starts scrutiny of the return and initiates assessment proceedings there is nothing concealed and the inaccuracy, if any, disappeared.. A perusal of this provision clearly shows that it is in the course of any proceedings under the Act, assessment proceedings in this case, that the AO is to be satisfied that the assessee has concealed the particulars of his income or furnished inaccurate particulars of such income. It is thus to be judged at this stage and if at this stage he has declared the correct income and/or furnished accurate particulars of his income then there is no scope, in our opinion, to arrive at the satisfaction by the AO because at that stage there is no such concealment. It disappeared by an action of the AO. In this case the assessee has no doubt did not show the amounts received as alleged gifts as his income, but no details of loans - are given in the return nor any other particulars thereof given by the assessee at that stage, not to speak of inaccurate one. When the assessment was taken up and a general enquiry was made by the AO requiring him to furnish details of any loans/gifts, if any, the assessee offered the amounts received as alleged gifts as his income and before it could be detected by the AO. There was thus no concealment of the particulars of his income nor there remained furnishing of any inaccurate particulars of his income. It vanished before it*

*could be detected. 21. The correct and accurate disclosure may be by filing the revised return or by furnishing the particulars of such income before the detection by the AO. The mere fact that the assessee had not revised returns or that the offer was by letter to avoid harassment to the assessee and the donors who were non-resident persons, it cannot convert an offer to ITA No. 1004, 1005/D/2011, 4388/D/14 & Others Assessment year 2004-05 & Others tax as concealment of income. Therefore, in my opinion the assessee has not furnished inaccurate particulars of the income in the returns before detection by the Revenue. 22. Therefore, mere omission of the surrendered income from the return of an item of receipt does neither amount to concealment nor furnishing of inaccurate particulars of income unless and until there is some evidence to show/exist or some circumstances found from which it can be gathered that the omission was attributable to an intention or a desire on the part of the assessee to hide or conceal the income so as to avoid the imposition of tax thereon. Apart from the surrender there was nothing more on record to hold the assessee guilty of offering the said amount on detection of the concealment. Even in assessment order there is nothing of that sort. 24. There was no specific provocation or an apprehension of detection prevailing at the time when the offer was made and in the absence of any*

*such imminent fear from the side of the Revenue, if the assessee came forward and paid the tax thereon by adding the same in the returned income, it has to be taken as a voluntary offer to tax. On the face of the evidence in the shape of confirmation letters, bank accounts, passport etc. in the hands of the assessee, it might be valid gift that would have convinced a reasonably minded person, specially a person exercising a judicial function. The accepted position of law is that merely because an assessee had agreed to the assessment that cannot bring in automatic levy of penalty. 25. The facts and circumstances and the merits of the case and the cogent evidences placed on record are such as to exonerate the assessee from concealment penalty. The CIT(A) in my opinion is right in deleting the penalty, his order is affirmed and the appeals of the Revenue are dismissed.”*

13. From the perusal of the above judgments and examining the facts of the instant nine appeals, we find that in all these cases the Assessing Officer has not struck down the relevant “word” from the sentence in the cyclostyled proforma of penalty show cause notice which means that the Assessing Officer was not sure as to on

what ground he has initiated the penalty proceedings and in such a case the alleged notice is not sustainable in law and is liable to be quashed. We, therefore, respectfully following the judgments and decisions referred to above, allow this common legal ground of the assessees in these nine appeals and delete the following penalties levied u/s 271(1)(c) of the Act in all these cases :-

Name of assessee	A.Y.	Amount Rs.
Kalyan Iron	2007-08	3,67,000
Kalyan Nav Nirman	2007-8	6,73,200
Kalyan Nav Nirman	2009-10	56,76,330
Kalyan Nav Nirman	2010-11	9,66,510
Kalyan Marble & Granite	2010-11	6,47,000
Name of assessee	A.Y.	Amount Rs.
Keti-T Construction	2010-11	72,81,800
Keti Sangam Infrastructure	2010-11	85,43,360
Keti Sangam Infrastructure	2009-10	6,28,330
Keti Sangam Infrastructure	2007-08	3,80,020

14. In view of our above findings wherein we have quashed the very initiation of penalty proceedings u/s

271(1)(c) of the Act, the other grounds raised in these 9 appeals become infructuous.

15. Now we take up the remaining three appeals pertaining to penalty u/s 271AAA of the Act. In these appeals, the following common grounds have been taken by the assessee :-

- “(i) That, the learned CIT(A) erred in dismissing the appeal filed by the appellant and in upholding the penalty levied by the learned A.O. u/s 271AAA of Rs. 43,94,610/-.*
- (ii) That, the learned CIT(A) erred in holding that the appellant has failed to specify and substantiate the manner in which the undisclosed income was derived.*
- (iii) That, the learned CIT(A) erred in holding that the appellant is not entitled to the immunity provided u/s 271AAA of the Act.*

*That on the facts and in the circumstances of the case, the appellant is entitled to the immunity as provided u/s 271AAA and the penalty levied by the A.O. and confirmed by the learned CIT(A) is wrong and uncalled for and is prayed to be deleted.”*

16. The learned counsel for the assessee has commonly submitted as follows :-

1. Coming to the penalties levied u/s 271AAA(1) in respect of AY 2011-12 & AY 2012-13, it is submitted that it is undisputed fact that the additional incomes were offered u/s 132(4) during the course of search proceedings and were also offered in the returns filed u/s 153A / 139, the relevant returns were filed within the due date and taxes were also paid. It is submitted that the above stated facts have not been disputed either in the assessment order or in the penalty order. Therefore, in the humble opinion of the appellants, they are entitled to immunity from penalty as provided in sub section (2) of section 271AAA. However, these penalties were levied and confirmed only on the ground that the appellant failed to specify and substantiate the manner in which such income was derived.
2. In this respect it is submitted that the additional incomes surrendered have been accepted merely on the basis of the explanation given by the appellant and on the basis of offering the same as business income by the appellant, which fact is

clearly discernable from the assessment order and also categorically stated by the Learned CIT(A) in her order.

3. It is submitted that all these assesseees are carrying on different business activities and the additional incomes were generated during the course of the respective business activities only. The assessee also explained these incomes before the Investigation wing and also in the returns of income filed subsequently through notes, which are enclosed in the respective paper books.
4. It is further submitted that even otherwise it is implied that the additional/ undisclosed income is generated from the business carried on by the assessee, as there can be no other source of generating such income. Further the assessee offered these income as business income, which was assessed and accepted without any variation and adverse comments in the assessment order.
5. So far as the issue of specifying and substantiating the manner of earning undisclosed income, which is sole ground on which penalties u/s 271AAA have been levied and confirmed, it is submitted that an important aspect of the matter is that the appellant was never required to explain and substantiate the method or manner of deriving such income, which duty was casted upon the Authorised Officer, as has been held by various High Courts and various Tribunals. For this proposition the appellants place reliance on the following decisions.
  - (i) The decision of The Hon'ble Gujarat High Court in the case of CIT vs. Mahendra C Shah [(2008) 299 ITR 305 (Guj)]
  - (ii) CIT V/s RadhaKishanGoel (2005) 278 ITR 454 (Allahabad)

- Principal CIT V/s Shahlon Silk Mills Pvt Ltd dated 05.02.2018
- (v) Decision of Honourable ITAT, Ahmedabad in case of Sulochanadevi A. Agarwal, Suratvs Department Of Income Tax
- (vi) Smt. Raj Rani Gupta V/s DCIT Central ITA No. 3371/Del/2011(Copy enclosed at page no. 167 to 177 of case law paper book)
- (vii) Mothers Pride Education Personna P. Ltd. V/s DCIT Central ITA No. 3372/Del/2011 (Copy enclosed at page no. 178 to 184 of case law paper book)
- (viii) Neeraj SingalVs. Assistant Commissioner of Income Tax, Central Circle-13, New Delhi [2014] 146 ITD 152 (DEL)
- (ix) ITAT Indore Bench in the case of Shri TikamchandGarg and Others which also belong to Kalyan Group in ITA No. 1027 to 1033/Ind/2016 vide order dated 28.06.2017
- (i) Decision of co-ordinate bench of Nagpur Tribunal in the case of Concrete Developers V/s ACIT reported in (2013) 34 taxmann.com 62 (Nagpur-Trib.)
- (ii) Decision of Honourable Cuttack ITAT in the case of Ashok Kumar Sharma V/s DCIT (2012) 149 TTJ 0033 (UO) copy enclosed at page no. 209 to 212 of the paper book.
- (iii) Decision of Honourable Delhi ITAT in the case of DCIT V/s Ashok Nagrath (2015) 154 ITD 0448 (Delhi) copy enclosed at page no. 213 to 215 of the paper book.
6. Gillco Developers & Builders vs. Deputy Commissioner of Income Tax, Chandigarh Tribunal (2017) 157 DTR 0 177 (Chd)(Trib)

17. Per contra, the learned DR referring to the judgment of Hon'ble High Court of Delhi in the case of Principal CIT vs. Smt.

Ritu Singhal; 92 taxmann.com 2224 (Del) submitted that the onus was on the assessee to specify during the course of search proceedings as to how it derived undisclosed income and under what head it fell and it is not mandatory that the revenue authorities should raise a specific query to this effect.

18. We have heard both the parties, perused the material available on record and have also gone through the judgments relied upon by both the parties. The common issue relates to penalty levied u/s 271AAA of the Act and confirmed by the learned Commissioner of Income Tax (Appeals). The Assessing Officer has denied the immunity to the assessee provided u/s 271AAA(2) of the Act for the sole reason that the assessee has not substantiated the manner in which the undisclosed income was derived. Before going ahead we would first like to reproduce the provisions of section 271AAA of the Act :-

***“Penalty where search has been initiated.***

**271AAA.** (1) *The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under [section 132](#) on or after the 1st day of June, 2007 but before the 1st day of July, 2012, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year.*

(2) *Nothing contained in sub-section (1) shall apply if the assessee,—*

- (i) *in the course of the search, in a statement under sub-section (4) of [section 132](#), admits the undisclosed income and specifies the manner in which such income has been derived;*
  - (ii) *substantiates the manner in which the undisclosed income was derived; and*
  - (iii) *pays the tax, together with interest, if any, in respect of the undisclosed income.*
- (3) *No penalty under the provisions of clause (c) of sub-section (1) of [section 271](#) shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1).*
- (4) *The provisions of [sections 274](#) and [275](#) shall, so far as may be, apply in relation to the penalty referred to in this section.*

*Explanation.—For the purposes of this section,—*

(a) *"undisclosed income" means—*

(i) *any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under [section 132](#), which has—*

(A) *not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or*

(B) *otherwise not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search; or*

(ii) *any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted;*

(b) *"specified previous year" means the previous year—*

(i) *which has ended before the date of search, but the date of filing the return of income under sub-section (1) of [section 139](#) for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the said date; or*

(ii) *in which search was conducted."*

19. From the perusal of the above section we observe that the penalty cannot be levied if the assessee fulfils three conditions mentioned in sub-section (2) of section 271AAA of the Act. In the instant case there is no dispute at the end of parties that the

assessee has fulfilled condition nos. 1 and 3 of sub-section (2) of section 271AAA of the Act and that the assessee has admitted the undisclosed income in the statement recorded u/s 132(4) of the Act during the course of search and has also paid taxes together with interest, if any, in respect of the undisclosed income. The bone of contention revolves round the second condition which says that the assessee should substantiate the manner in which the undisclosed income was derived. The learned counsel for the assessee has contended that during the course of giving the statement, the assessee admitted the undisclosed income and pursuant thereto there was no further question asked by the Assessing Officer to the assessee for substantiating the manner in which the undisclosed income was derived. It was also contended that the undisclosed income was earned out of the business income as accepted by Mr. Tikamchand Garg who gave the statement on behalf of group concern and in the return of income filed after the search the surrendered income has been disclosed as business income in various business concerns/associates and the same has been assessed as business income by the revenue authorities. Further no other addition was made and the return of income including the

unaccounted business income was accepted by the revenue authorities. The revenue's contention is that the onus heavily lies on the assessee because the immunity has been sought from paying penalty @ 10% and if this benefit is to be taken then the onus lies heavily on the assessee to fulfill the conditions enumerated u/s 271AAA of the Act.

20. In order to examine the facts we have perused the statement given by Shri Tikamchand Garg during the course of search proceedings. In reply to question no. 3 it was stated that on account of papers and other records seized from the business and residential premises of the group concerns/individuals as well as valuable assets seized by the revenue authorities, an amount of Rs.51 crores is surrendered towards unaccounted income on behalf of the group concerns, companies and related individuals. Along with this reply, the post-dated cheques for tax of Rs. 7.51 crores were also offered to the revenue authorities. Thereafter, in question no. 4 it was simply asked that do you to want to say anything else to which the reply was No. We observe that the revenue authorities

have not asked any specific question to the concern person to state the manner in which the undisclosed income was derived.

21. In these given facts where a specific question has not been asked by the search team about the manner in which the undisclosed income was derived, whether the assessee shall still be eligible to the immunity granted in section 271AAA of the Act needs to be examined in the light of the judicial pronouncements. We would first like to go through the findings of the coordinate Bench given in the very same group of cases dealing with the very same issue of 271AAA(2) of the Act relating to fulfilment of second condition and we find that the Tribunal vide its order dated 28.6.2017 in ITA Nos. 1027 & 1028/Ind/2016, relying upon the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. Mahindra C. Shah (supra) as well as other judgments and decisions, held the action of the Assessing Officer imposing penalty u/s 271AAA of the Act as not justified observing as follows :-

*“7. We have considered the facts rival submissions and material on record. We find that during the course of search and seizure operation a statement under section 132(4) of the Act was recorded on 13-05-2011 and 27-05-2011, from Shri Tikamchand Garg , head of*

*Garg family, wherein in reply to question No.2 of his statement dtd. 13-05-2011 (Paper Book Page No.2) and again on 27-05-2013 in reply to question no. 2, of his statement dtd. 27-05-2011, he on behalf of all the individuals of Garg family and group of concerns and companies had made a disclosure of additional income of Rs. 70 Crores, by stating that this amount covers and represent any undisclosed income receipts, discrepancy or disallowances or any valuable article or things, money, jewellery, documents or papers found / or seized during the search operation. Such undisclosed income is disclosed on the basis discrepancies found in loose papers and books of accounts etc. during search in the course of our business activity. Thus, apparently the assessee has made disclosure of undisclosed income, which has been earned from business activity not fully disclosed in the books of accounts. Accordingly, Shri Tikamchad Garg has also gave postdated cheque against payment of taxes. Accordingly, the family members have shown this undisclosed return of income filed in response to notice u/s 153A. The perusal of statement recorded us 1324 shows that no specific question was put regarding manner in which the undisclosed income was derived. However, impliedly the manner of income earned was from business income only. We are also of the view that the assessee has already disclosed undisclosed income in proceeding and but not clearly specified the manner in which the said income derived as it was not asked for. However, this will not the assessee for the assessee from the immunity provided under section 271AAA(2) of the Act. As held in the faase of CIT vs. Radha Kishan Goel (2005) 278 ITR 454 (Allahabad) (2006) 152 Taxman 290/200 CTR 300(All) where the Hon'ble High Court has accepted that unless the Authorised Officer has been deprived. It is not expected from the person to make a statement in this regard. For the better appreciation of facts the relevant para of the*

*order are reproduced as under :-*

*10. Under section 132(4) of the Act, it is the authorised officer, who examines on oath any person, who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing, therefore, it is for the authorised officer to record the statement in his own way. Therefore, it is not expected from the person to state those things, which are not asked by the authorised officer.*

*11. It is a matter of common knowledge, which cannot be ignored that then search is being conducted with the completed team of the officers consisting of several officers with the police force. Usually telephone and all other connections are disconnected and all ingress and egress are blocked. During the Course of search person is so tortured, harassed and put to a mental agony that he loses his normal mental state of mind and at that stage it cannot be expected from a person to preempt the statement required to be given in law as a part of his defense.*

*12. In these circumstances, we are of the view that under section 132(4) of the Act unless the authorised officer puts a specific question with regard to the manner in which income has been derived, it is not expected from the person to make a statement in this regard and in case in the statement the manner in which income has been derived has not been stated but has been stated subsequently, that amounts to the compliance with Explanation 5(2) of the Act. We are also of the opinion that in case there is nothing to the contrary in the statement recorded under section 132(4) of the Act, in the absence of any specific statement about the manner in which such income has been derived, it can be inferred that such undisclosed income was derived from the business which he was carrying on or from other Sources. The object of the provision is*

*achieved by making the statement admitting the non-disclosure of money, bullion, jewellery, etc. Thus, we are of the opinion that much importance should not be attached to the statement about the manner in which such income has been derived. It can be inferred on the facts and circumstances of the case) in the absence of anything to the contrary. Therefore) mere non-statement of the manner in which such income was derived would not make Explanation 5(2) inapplicable.*

7.1. *Thus, applying the ratio of above decision, when the assessee has disclosed the income during search and paid the taxes and it has been accepted no penalty under section 271AAA is called for just because the manner in which such income was earned not specified in statement under section 132(4) of the Act. The following the ratio of said decision the coordinated bench of Delhi Tribunal deleted the penalty under section 271AAA in the case of Raj Rani Gupta v. DCIT [ITA. o.3371/Del/2011) (PB-78-88) by relying on the decision of Hon'bl Allahabad High Court in the case of CIT v . Radha Kishan Goel [2005]; 278 ITR 454 (Allahabad)[2006] 152 Taxrrian 290/ 200 CTR 300(All) and Honble Gujarat High Court in the case of Mahendra C Shah CIT v . Mahendra C. Shah [2008] 299 ITR 305(Guj.). In this case, also penalty under section 271AAA was levied on the basis that the assessee did not, substantiate the manner in which the undisclosed income derived. There Tribunal has of observing that the immunity granted under clause 2 of Explanation 5A section 271(1)(c) are similar to immunity granted to the assessee under clause (2) of section 271 AAA, the letter dated the penalty as the assessee was neither asked about the manner in which the income was found not required to substantiate the manner of earning such income. The assessee had disclosed the income under section 132(4) and disclosed the same in their return of income filed in response to notice under section 153A*

*of the Act. We also note that the assessee has paid due taxes with interest thorn. It is also relevant to mention that the income declared by the assessee has been duly accepted by the AO and no addition has been made. In view of such circumstances, we are of the considered opinion that the assessee had duly fulfilled the condition laid down under section 271AAA (2) of the Act. We also find that the assessee made disclosure during search and specified manner in which income was earned in the statement under section 132(4) recorded from Shri Manish Kalani on behalf of the assessee group.*

*7.2. Similarly in the case of D'CI'T V. Shree Salasar Properties & Finance Pvt. Ltd. [I.T.A. No. 1081 I Koll 20 13] wherein penalty under section 271 AAA were levied on the ground that the assessee is not entitled immunity, as the conditions stipulated were not fulfilled. It was observed by the A.O. the assessee has not substantiated the manner in which the undisclosed income was derived. Penalty was levied on the ground that but for the search the assessee would not have come forward with the additional income as discussed in paragraph 5 of the order. The ITAT in para 8.3 noted that the additional income of Rs. 1.75 crores was offered voluntarily by the assessee without incriminating material found during the course of search and held that same does not fall within the definition of undisclosed income. In Para 8.4 it has been held that nothing in implementing was found with regard to the aspect of share capital and is loans which were ultimately offered by the assessee, hence it was school proved that the offer of income was without detection of the Department and accordingly the argument that but for the search, this income would not have been offered does not hold any water and deserve to be dismissed. Our view is also supported by decision of coordinated bench in the case of Shri Ashok Kumar Sharma vs. DCIT (2012)31*

*CCH310 (Cuttack-Trib)/77 DTR241/149 TTJ 33 wherein it was held that (where the assessee has disclosed concealed income while giving statement u/s 132 during the course of search and paid tax thereon and showed said undisclosed income in return filed under head "income from business and Department has accepted these returns and accordingly passed assessment orders.*

*7.3 Further reliance is placed in the case of DCIT vs. Ashok Nagrath [2015J 154 ITD 448/ 57 taxmann.com 15(Delhi-Trib) where assessee agreed for a declaration on account of excess stock-in trade and paid tax together with interest, no penalty under section 271 AM would be levied.*

*7.4. Our view is also supported with decision in the case of Concrete Developers vs. ACIT [2013] 34 taxriann.com 62 (Nag-Trib) wherein it was held that where assessee had disclosed certain amount during the course of search, and paid taxes thereon filed return showing said income as business income and same has been accepted by the Assessing Officer under the head 'business income" penalty under section 271 AAA of Income Tax Act, 1961, was not leviable.*

*7.5. The Ld. AR relied in the case of Neeraj Singal v. ACIT [2014J 146 ITD 152 (DEL) it was held that it was evident that during the course of search proceedings the authorised officer of Department has not raised any specific query regarding the manner in which the undisclosed income has been derived and on the contrary assessee has tried to explain the earning of undisclosed income in question in its reply during the course of recording of the statement under section 132(4) and thereafter. In absence of query raised by authorised officer during the course of recording of the statement under section 132(4) about the manner in which the undisclosed income has been derived and*

*about its substantiation, the AO was not justified in imposing penalty under section 271AAA especially when offered undisclosed income has been accepted and due taxes thereon has been paid by the assessee. Order of the AO levying penalty was set aside, appeal favour of the assessee. Similarly penalty levied for not specific manner in search was deleted by Hon "ble Gujarat High Court in the case of CIT v. Mahendra C. Shah [2008J 299 ITR 305(Guj.)*

*7.6. In view of above facts of the present case wherefrom it is evident that during the course of search proceedings, the Authorised Officer of the Department has not raised any specific query regarding manner in Court and coordinated bench various tribunal as discussed above which the undisclosed income has been derived and on the contrary the assessee has explained that undisclosed income is being surrendered on the basis of loose papers, discrepancies found in seized material and valuables found during search.' We thus respectfully following the above decisions of Hon'ble Allahabad High Court and Horible Gujarat High Court and coordinated bench various tribunal as discussed above hold that in absence of query raised by the Authorized Officer during the course of search recording the statement under section 132(4) about the manner in which the undisclosed income has been derived and about its substantiation, the A.O. was not justified in imposing penalty under section 271AAA of the Act specifically when the surrendered undisclosed income has been accepted and due taxes has been paid by the assessee. Hence, we hereby set-aside the impugned orders of the authorities below and cancel the penalty levied u/s. 271AAA of IT Act in the cases of the above 7 appeals by the assessees by allowing by allowing their appeals."*

22. We further observe that the Hon'ble High Court of Gujrat in another case of Principal CIT vs. M/s Shahlon Silk Mills Pvt. Ltd.; Tax Appeal No. 824 of 2017 dated 5.2.2018 relying upon the judgment of CIT vs. Mahindra C. Shah which was in connection with penalty u/s 271(1)(c) of the Act, again applied the same findings adjudicating the issue relating to 271AAA of the Act and held as follows :-

*“1. These Tax Appeals arise in common background. We may notice facts from Tax Appeal No.823 of 2017. The appeal is filed by the Revenue challenging the judgment of Income Tax Appellate Tribunal dated 27.03.2017 raising following questions for our consideration: “[A] Whether on the facts and in the circumstances of the case and in law, the Appellate Tribunal erred in confirming the order of CIT(A) by ignoring the fact that the assessee has not fulfilled the conditions laid down u/s 271AAA? [B] Whether on the facts and in the circumstances of the case and in law, the Appellate Tribunal can delete the penalty when the assessee has not fulfilled the conditions laid down u/s 271AAA as the assessee neither specified the manner of undisclosed income nor substantiate the manner in which the income was derived?”*

*2. Issue arises in connection with the assessment year 201011 and pertains to penalty under section 271AAA of the Income Tax Act, 1961 ('the Act' for short). The assessee is engaged in the business of manufacturing of grey fabrics and processing of yarn. Search and seizure operation was carried out at the residential and business premises of the assessee on 28.01.2010. During such search, the assessee disclosed income of Rs.2,09,67,770/ previously undisclosed. Assessment under section 143(3) read with section 153A of the Act was finalized on*

29.12.2011. *The Income Tax Officer initiated penalty proceedings under section 271AAA of the Act and passed the order of penalty of Rs.20.96 lakhs on the ground that the assessee though had disclosed the income, failed to disclose the manner of earning such income and substantiate such manner of earning the income offered to tax.*

3. *Commissioner of Income Tax (Appeals) as well as the Tribunal both concurrently found that all the requirements of explanation 5 below subsection (4) of section 132 of the Act were satisfied. With respect to disclosure of the manner in which the income was earned, the said authorities were of the opinion that while recording the statement of the assessee during search, no question regarding this issue was put by the Revenue officer. Reliance was placed on the decision of this Court in case of Commissioner of Income Tax v. Mahendra C. Shah reported in [2008] 299 ITR 305 (Guj).*

4. *Having noted the facts, we find that the issue is covered against the Revenue by virtue of the judgment of this Court in case of Mahendra C. Shah (supra) in which, following observations were made:*

*“15. In so far as the alleged failure on the part of the assessee to specify in the statement under Section 132(4) of the Act regarding the manner in which such income has been derived, suffice it to state that when the statement is being recorded by the authorized officer it is incumbent upon the authorized officer to explain the provisions of Explanation 5 i in entirety to the assessee concerned and the authorized officer cannot stop short at a particular stage so as to permit the Revenue to take advantage of such a lapse in the statement. The reason is not far to seek. In the first instance, the statement is being recorded in the question and answer form and there would be no occasion for an assessee to state and make averments in the exact format stipulated by the provisions considering the setting in which such statement is being recorded, as noted by Allahabad High Court in case of CIT v. Radha Kishan Goel (supra). Secondly,*

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*considering the social environment it is not possible to expect from an assessee, whether literate or illiterate, to be specific and to the point regarding the conditions stipulated by Exception No. 2 while making statement under Section 132(4) of the Act. The view taken by the Tribunal as well as Allahabad High Court to the effect that even if the statement does not specify the manner in which the income is derived, if the income is declared and tax thereon paid, there would be substantial compliance not warranting any further denial of the benefit under Exception No. 2 in Explanation 5 is commendable.*

*5. In the result, Tax Appeals are dismissed.”*

Similarly Hon'ble High Court of Delhi in the case of Principal CIT vs. M/s Emirates Technologies Pvt. Ltd.; ITA No. 400/2017 in its decision dated 18.7.2017 observing that no specific query was put to the assessee by drawing his attention to section 271AAA and asked him to specify the manner in which the undisclosed income was derived, upheld the deletion of penalty by the ITAT and dismissed the appeal filed by the department.

23. So far as the decision referred to and relied upon by the learned DR in the case of Principal CIT vs. Smt. Ritu Singal (supra) is concerned, the Hon'ble Court held in favour of the revenue holding that the assessee did not derive that income and what had it fell in and even if the revenue authority does not raise a

specific query, it cannot be said that the assessee has fulfilled the requirements and, therefore, should have substantiated the manner in which the undisclosed income was derived so as to comply with the second condition provided in sub-section (2) of section 271AAA of the Act.

24. We find that where there are two views of the Hon'ble High Courts on the very same issue wherein some judgments are favouring the assessee holding that if the specific query is not asked to the assessee then the assessee should not be treated in default and should be given the immunity from paying the penalty if all the other conditions are fulfilled whereas in the case of CIT vs. Smt. Ritu Singal (supra) the onus is placed on the assessee to substantiate the manner in which the undisclosed income has been earned even if the specific query has not been asked. In such a situation, we are of the view that the judgment of the Hon'ble Apex Court in the case of CIT vs. Vegetable Products Limited; 88 ITR 192 (Supreme Court) needs to be applied wherein after detailed discussion, it was held by the Hon'ble Supreme Court as under :-

*“If we find that language to be ambiguous or capable of more meanings than one, then we have to adopt that interpretation which favours the assessee, more particularly so because the provision relates to imposition of penalty.”*

We, therefore, respectfully following the above judgment of the Hon'ble Supreme Court and the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. M/s Shahlon Silk Mills Pvt. Ltd. (supra) as well as the decisions of the Tribunal in the cases of the very same group of assessees relating to the instant appeals and in the given facts and circumstances, find that the assessees are eligible for getting immunity from paying penalty u/s 271AAA of the Act as the undisclosed income has been admitted during the course of search and the manner of earning income is from business sources, due taxes with interest have been paid, surrendered income has been offered as business income in returns of income filed and they have been accepted and assessed as business income only and in this manner the assessee has successfully fulfilled all the three conditions u/s 271AAA of the Act. Even otherwise, if the revenue has not asked specific question relating to the manner of

deriving undisclosed income, the assessee while fulfilling the first condition of admitting the undisclosed income has already specified the manner of earning the income i.e. from business sources and the statement u/s 132(4) of the Act was not for individual business concern, but was for the group concerns/companies/business associates/individuals and at the point of time of giving the statement during the course of search, specific details about each business concern and the source of earning such undisclosed income are not practically possible for the person giving the statement on behalf of the group concerns/individuals. Above all, the business income surrendered has been offered and assessed as business income only. We are, therefore, of the view that the learned Commissioner of Income Tax (Appeals) erred in confirming the findings of the Assessing Officer levying penalty u/s 271AAA of the Act. We accordingly set aside the findings of the learned Commissioner of Income Tax (Appeals) and delete the penalty of Rs.25,14,100/- in the case of M/s Keti Sangam Infrastructure (I) Limited, Rs.43,94,610/- in the case of Keti-T Construction (India) Limited and Rs. 25,07,250/- in the case of Keti Sangam Infrastructure (I) Limited levied u/s 271AAA of the Act.

25. In the result, all the 12 appeals filed at the instance of different assesseees stand allowed.

Pronounced in open Court on 27<sup>th</sup> June, 2018.

Sd/-

sd/-

(KUL BHARAT)  
JUDICIAL MEMBER

(MANISH BORAD)  
ACCOUNTANT MEMBER

27 June, 2018

Dn/-

Copy to – Appellant/Respodent/Pr.CIT/CIT(A)/DR/Guard File

By order

Private Secretary

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