IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.	A.Y.	Appellant	Respondent
3005/Mum/18	2005-06	Vaswani Trust, Vaswani Gardens, 25, Sobani Road, Cuffe Parade, MUMBAI [PAN: AAATV6765B]	Income Tax Officer-12(2)(4), MUMBAI
3006/Mum/18	2006-07		
3007/Mum/18	2005-06	Vaswani Chambers, Vaswani Gardens, 25, Sobani Road, Cuffe Parade, MUMBAI [PAN: AAAFV7924L]	
3008/Mum/18	2006-07		
3009/Mum/18	2007-08	Vaswani Trust, Vaswani Gardens, 25, Sobani Road, Cuffe Parade, MUMBAI [PAN: AAATV6765B]	

Appellant By : Shri Rakesh Mohan, AR
Respondent By : Shri Rajeev Gubgotra, DR

Date of Hearing : 19-12-2018	Date of Pronouncement : 01-02-2019

O R D E R

Per G. Manjunatha, Accountant Member:

These five appeals filed by two different assessees are directed against separate but identical orders of the

Commissioner of Income Tax (Appeals)-28, Mumbai, both dated 02-02-2018 and they pertain to AYs. 2005-06, 2006-07 and 2007-08. Since, the facts are identical and issues are common in these appeals, for the sake of convenience all these appeals are heard together and are disposed of by this consolidated order.

2. Both of the assessees have taken more or less common grounds of appeal for all the assessment years, challenging levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (Act). For the sake of brevity, grounds raised in ITA No. 3007/Mum/2018 for the AY. 2005-06 are extracted below:

"1. The Commissioner of Income Tax (Appeals) erred levying penalty u/s. 271(1)(c).

2. The Commissioner of Income Tax (Appeals) failed to appreciate that in the present case there is neither concealment nor the submission of inaccurate particulars.

3. The Commissioner of Income Tax (Appeals) has failed to appreciate that the return filed by the assessee disclosed all material facts of the case.

4. The Commissioner of Income Tax (Appeals) erred in levying penalty twice for the same issue i.e., on the assessee Trust and on its beneficiaries as well.

5. The Commissioner of Income Tax (Appeals) has erred in not appreciating and not following the case law relied upon by the assessee".

3. Brief facts of the case are that, assessee is an Association of Persons (AOP). The income of the AOP is assessed in the hands of the members and there is no tax liability on the AOP *per se.* The assessee has received income from house property under three separate agreements. First agreement is a Leave and License Agreement and the second agreement is towards property tax and the third one is for maintenance charges. All the amounts received are directly related to the property, which is given on rent. The income of the AOP is assessed directly in the hands of the Members, since the department has exercised the option u/s. 166 of the Act, consequently, there is no tax liability on the AOP. Assessee has filed its return of income declaring rental income along with maintenance charges and property charges recovered under the head 'income from house property' and claimed standard deduction @30% on total receipts. Assessment has been reopened u/s. 147 of the Act, on the ground that income chargeable to tax had been escaped assessment on account of excessive deduction claimed u/s. 24 towards excess recovery from outgoings. In response to notice issued u/s. 148, assessee has filed its return of income, withdrawing deduction claimed u/s. 24 towards excess of

recovery from outgoings. Consequently the income of the AOP before allocation to Members has gone up from Rs. 2,30,66,632/- as against income shown in original return filed u/s. 139(1) of the Act as Rs. 2,17,74,217/-. The assessment has been completed u/s. 143(3) r.w.s.147 of the Act, determining total income as admitted by the assessee in its return filed in response to notice u/s. 148 of the Act.

4. Thereafter, AO initiated penalty proceedings u/s. 271(1)(c) of the Act, for furnishing inaccurate particulars of income in respect of computation of income under the head 'income from house property'. Accordingly, a show cause notice u/s. 274 r.w.s. 271(1)(c) dt. 20-03-2013 was issued asking as to why penalty shall not be levied for furnishing inaccurate particulars of income. In response to notice, the Ld. AR of the assessee appeared and filed detailed submissions vide letter dt. 03-06-2013 to argue that assessee neither concealed any income nor has furnished inaccurate particulars of income, which warrants levy of penalty u/s. 271(1)(c) in respect of re-computation of income by excluding deduction claimed towards excess recovery of outgoings u/s. 24 of the Act. The enhancement of income allocable to Members of AOP is on account of change of head of

income as per which the assessee's opinion is that excess recovery of outgoings is chargeable to tax under the head 'income from house property', whereas the AO has taken a view that it is assessable under the head 'income from other sources'. But all the facts necessary for computation of income have been disclosed in the return filed u/s. 139(1) of the Act and also deduction claimed u/s. 24 towards excess recovery of outgoings has been withdrawn in the return filed u/s. 148 of the Act. Therefore, the same could not be treated as furnishing of inaccurate particulars of income so as to levy penalty u/s. 271(1)(c) of the Act.

5. The AO after considering relevant submissions of the assessee and also considering certain judicial precedents including decision of the Hon'ble Supreme Court in the case of K.P. Madhusudan Vs. CIT [251 ITR 99] (SC) held that assessee has furnished inaccurate particulars of income and concealed the particulars of its income in terms of Explanation-1 to Section 271(1)(c) of the Act. Therefore, he opined that it is a fit case for levying penalty u/s. 271(1)(c) and accordingly levied penalty of Rs. 3,99,356/-, which is 100% of tax sought to be awarded. The relevant observations are extracted below:

"I have gone through the assessee's submissions, and it is seen that assessee has accepted that the original return filed by them was showing incorrect income particulars, which was corrected by them in the return filed by them after they received notice u/s 148 of I.T.Act 1961. It is clear that the assessee was showing some income under the head 'Income from House Property' in the original return which was not eligible under the said head, but was to be taken under the head 'Income from Other Sources'. This was accepted by the assessee who filed return in response to notice u/s 148 issued, wherein it has taken the said income, which was wrongly shown under the head 'Income from House Property' in the original return, to the head 'Income from Other Sources'. By showing the said income under the head 'Income from Other Sources', the assessee's income on hand, is now on the higher side as the claim u/s 24 of I.Tax Act 1961, is now not available on the said amount. Hence, the assessee's contention that this is just a change of head of income and not concealment and submission of inaccurate particulars is absolutely not correct which is clearly evident from the fact that the total income now works out to Rs. 2,30,66,632/- instead of Rs.2,17,74,217/- shown earlier before distribution to members. By showing ineligible income under the head 'Income from House Property' and not under 'Income from Other Sources' the assessee was wrongfully and willfully enjoying incorrect claim u/s 24 of I.Tax Act 1961, thereby rendering the particulars in original return filed as absolutely inaccurate, and willful concealment of income. It is pertinent to mention here that the assessee AOP first computes the total income as per the provisions of the Act and thereafter, it merely distributes the proportionate shares to its members in their respective sharing ratio, who, in turn, offer these shares for taxation. In the assessment order passed u/s 143(3) r.w.s 147 dtd.20-3-2013, the total income before distribution to members is assessed at Rs. 2,30,66,632/-. as against Rs.2,17,74,217/- shown by the assessee in the original return, leading to enhancement of income by Rs. 12,92,4157/-. Had the case not been reopened u/s 148, the said income would have not been brought under the tax net. It will not be amiss to say that had the case not been re-opened, that the assessee's furnishing of inaccurate particulars would not have come to light, and the said income would have remained concealed. The assessee has furnished inaccurate particulars in the return. The assessee's act of revising its return by enhancing its total income before distribution to its members by Rs. 12,92,4157/-. attracts penal provisions of section 271 (1)(c) as the said amount depicts the part of total income in respect of which particulars have been concealed and inaccurate particulars furnished.

The assessee has further submitted that- ....The assesses in question is an AOP and the total income of the assessee gets allocated I transferred to its beneficiaries in proportion to their respective shares. After the allocation the total income of the AOP becomes nil and there is no tax payable by the assessee. Therefore, arithmetically the computation of penalty would result into Zero...This submission of the assessee is also not acceptable as discussed below:

The assessee itself mentioned that the assessee in question is an AOP and that the total income of the assessee gets allocated/transferred to its beneficiaries in proportion to their respective shares. In other words, the primary task of computation of the total income in respect of the above activity is in the case of the assessee AOP and not in the case of the beneficiaries/members to whom merely the shares of total income are allocated after calculation of total income. For the sake of further clarity, the Explanation 1 to section 271(1)(c) of Income Tax Act 1961 is re-produced as under :-

"Explanation 1 - Where in respect of any facts material to the computation to the total income of any person under this Act, -

(A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) {or the Commissioner} to be false, or

(B) such person offers an explanation which he is (not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him)

then, <u>the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purpose of clause (c) of this sub-section be deemed to represent the income in respect of which particulars have been concealed."</u>

Hence, as per the above explanation, it is seen that identification and presentation of particular amount depending upon its nature is a fact material to the computation of total income of the assessee. In this case also, the primary responsibility of presentation of showing the amount of 'Excess of recovery from Outgoings' under the head "Income from Other Sources" instead under head 'Income from House Property' was in the case of the assessee AOP and not its members, as the assessee first computes total income in its case and then merely allocates/transfers to its beneficiaries their shares in proportion to their sharing ratios. Thus, default is clearly on the part of the assessee AOP which has led to these penalty proceedings.

This would be further evident from the extract of the reply received from the members in nse to the penalty initiated u/s 271(1)(c) and notice issued to them in their cases, which reads as under:-

".... The income of the assessee is enhanced consequential to the enhancement in the total income of the AOP. The main issue in this case was that income of AOP was

originally assessed as Income from House Property. Subsequently, during reassessment proceedings, the same was assessed under the head Income from Other Sources. The gross amount of income was correctly mentioned in the original return also. The only difference is that the head of income under which it was assessed now is different. Due to this and consequential to the same, the income of the assessee, being one of the beneficiaries of the said AOP, has also been enhanced..."

It has been admitted by the members, that their income has been enhanced consequential to the enhancement in the total income of the assessee AOP. The income of the assessee AOP has enhanced due to inclusion of the income omitted by the assessee in its return filed originally. It has also been admitted that the income of the AOP has enhanced due to reassessment proceedings, which brought to tax the above amount which had escaped assessment.

From the above, it becomes amply clear that, in the case of the assessee the amount added in computing total income is Rs. 12.92.415/- which, for the purpose of sec.271(1)(c) be deemed to represent the income in respect of which particulars have been concealed which results in tax sought to be evaded for the purposes of lew of penalty.

From the above, it is clearly seen that in the explanation furnished during penalty proceedings, the assessee has not only failed to substantiate the explanation furnished by it but also failed to establish that the said explanation given by it is bona fide. It can thus be seen that the assessee has clearly furnished inaccurate particulars of income and concealed particulars of income in respect of facts material to computing assessee's income.

It is relevant to mention here the statutory position with regard to the penalty u/s 271(1)(c) as on date. The statutory position on and after 1.4.1976 in view of the new Explanation-l to that section is that where, in respect of any claim, the assessee offers no explanation or offers an explanation which the A.O. has considered to be false or the assessee has offered an explanation but no material or evidence to substantiate it, then he shall be deemed to have concealed such income within the meaning of section 271(1) (c) and by the operation of the Explanation, the onus lies on the assessee to rebut such a presumption.

In addition to the above statutory position, the legal principles governing the penalty u/s 271(1)(c) emerge from some of the landmark decisions of the judicial authorities such as the following :-

a) In the case of K.P.Madhusudan Vs. CIT 251 ITR 99 (SC) the Apex Court has held that it is for the assessee to prove that his failure to return the correct income was not due to fraud or negligence. If he fails to do so, he shall be deemed to have concealed the particulars of his income or furnished inaccurate particulars thereof and consequently liable for penalty provided by the section. Further, in the case of IT Vs.

Musaddilal Ram Bharose (165 ITR 14), the Apex Court has held that after insertion of Explanation, the responsibility of rebuttal lies on the assessee.
b) Further, in the judgement in the case of RaghuvirSoni Vs. ACIT 258 ITR 239 (Raj.), the Hon'ble High Court have held that the provisions relating to levy of penalty for concealment of income have been materially altered w.e.f. April 1, 1976. It is now clearly postulated that where any amount is added in computing the income of the assessee and in the penalty proceedings the assessee fails to offer an explanation or offers an explanation which is found to be false or where on furnishing an explanation he is not able to substantiate the same, and fails to prove that such explanation is bona fide, then for the purposes of clause (c)the said addition or deduction has to be deemed to represent the income in respect of which particulars have been concealed.
The assessee's act of omitting the said income in the original return is deliberate. It is only after detection of concealed income and issue of notice u/s 148 that the assessee filed a revised return. Revising the return after detection of concealed income does not offer immunity from penalty. Relevant facts have been noted in order sheet and assessment order as stated above. The assessee has attempted to distort and dilute the issue, but cannot succeed, as in this case for the reasons mentioned above and in the assessment order, penalty u/s 271(1)(c) is attracted.
Upon carefully considering the submission made and after examining the assessee's case in the light of various judicial pronouncements as discussed above, I hold that the assessee has furnished inaccurate particulars of income and concealed the particulars of its income both in terms of Explanation 1 to section 271(1)(c) of the Act, and even otherwise, i.e. without invoking such deeming provisions, to the extent of Rs.20,29,8327-. Hence, this is a fit case for levy of penalty u/s 271(1) (c) of the Act".

6. Aggrieved by the penalty order, the assessee preferred an appeal before the CIT(A).

7. Before the CIT(A), assessee reiterated its submissions made before the AO to argue that mere change of head of income and consequent withdrawal of deduction claimed u/s. 24 of the Act cannot be considered as furnishing of inaccurate particulars of

income, which warrants levy of penalty u/s. 271(1)(c) of the Act. The assessee further submitted that it has been following similar system of computation of income in respect of rental and other receipts from property, which has been accepted by the department in the past. However, during the current financial year, when the AO has issued 148 notice, the assessee has withdrawn its claim excluding the excess of outgoings and consequent deduction claimed u/s. 24 on such recoveries in the return filed in response to the notice u/s. 148 of the Act. The only dispute is with regard to head of income under which particular income is assessable to tax, otherwise, all primary facts necessary for computation of income has been disclosed in the return filed u/s. 139(1) of the Act. Therefore, it is incorrect to say that assessee has deliberately furnished inaccurate particulars of income, which warrants levy of penalty u/s. 271(1)(c) of the Act.

8. Ld. CIT(A) after considering the submissions of assessee and also by following certain judicial precedents including decision of the Hon'ble Delhi High Court in the case of CIT Vs. Zoom Communication (P.) Ltd., (2010) [327 ITR 510] (Del), affirmed penalty levied u/s. 271(1)(c) of the Act by holding that

the assessee claimed standard deduction u/s. 24 of the Act in respect of maintenance charges and other charges considering the same as part of rental income, which is otherwise not assessable under the head 'income from house property' which is nothing but furnishing of inaccurate particulars of income within the meaning of Section 271(1)(c) of the Act. Accordingly, there is no error in the findings of AO in levying penalty for furnishing inaccurate particulars of income. The relevant observations of the Ld. CIT(A) are as under:

"I have gone through the assessee's submissions, and it is seen that assessee has accepted that the original return filed by them was showing incorrect income particulars, which was corrected by them in the return filed by them after they received notice u/s.148 of I.T. Act, 1961. It is clear that the assessee was showing some income under the head 'income from House Property' in the original return which was not eligible under the said head, but was to be taken under the head 'income from Other Sources'. This was accepted by the assessee who filed return in response to notice u/s.148 issued, wherein it has taken the said income, which was wrongly shown under the head 'Income from House Property' in the original return, to the head 'Income from Other Sources'. By showing the said income under the head 'income from other sources', the assessee's income on hand, is now on the higher side as the claim u/s.24 of I.T. Act, 1961, is now not available on the said amount. Hence, the assessee's contention that this is just a change of head of income and not concealment and submission of inaccurate particulars is absolutely not correct which is clearly evident from the fact that the total income now works out to Rs.2,30,66,632/- instead of Rs.2,17,74,217/- shown earlier before distribution to members. By showing ineligible income under the head Income from House Property' and not under 'Income from Other Sources' the assessee was wrongfully and willfully enjoying incorrect claim u/s.24 of IT. Act, 1961, thereby rendering the particulars in original return filed as absolutely inaccurate, and willful concealment of income. It is pertinent to mention here that the assessee AOP first computes the total income

as per the provisions of the Act and thereafter, it merely distributes the proportionate shares to its members in their respective sharing ratio, who, in turn, offer these shares for taxation. In the assessment order passed u/s.143(3) r.w.s.147dtd.20.03.2013, the total income before distribution to members is assessed at Rs. 2,30,66,632/-, as against Rs. 2,17,74,217/- shown by the assessee in the original return, leading to enhancement of income by Rs.12,92,415/-. Had the case not been reopened u/s.148, the said income would have not been brought under the tax net. It will not be amiss to say that had the case not been re-opened, that the assessee's famishing of inaccurate particulars would not have come to light, and the said income would have remained concealed. The assessee has furnished inaccurate particulars in the return. The assessee's act of revising its return by enhancing its j total income before distribution to its members by Rs.12,92,415/- attracts penal provisions of section 271(1)© as the said amount depicts the part of total income In respect of which particulars have been concealed and inaccurate particulars furnished.....

The assessee itself mentioned that the assessee in question is an AOP and that the total income of the assessee gets allocated/transferred to its beneficiaries to their respective shares. In other words, the primary task of computation of the total income in respect of the above activity is in the case of the assessee AOP and not In the case of the beneficiaries/members to whom merely the shares of total income are allocated after calculation of total income.

It has been admitted by the members, that their income has been enhanced consequential to the enhancement in the total income of the assessee AOP. The Income of the assessee AOP has enhanced due to inclusion of the income omitted by the assessee in its return filed originally. It has also been admitted that the income of the AOP has enhanced due to reassessment proceedings, which brought to tax the above amount which had escaped assessment.

From the above, it becomes amply clear that, in the case of the assessee the amount added in computing total income is Rs.19,05,132/- which, for the purpose of Sec.271(l)© be deemed to represent the income in respect of which particulars have been concealed which results in tax sought to be evaded for the purposes of levy of penalty".

9. Ld. AR for the assessee, at the time of hearing submitted that on merits, the issue is covered in favour of the assessee by the decision of the ITAT, Mumbai 'G' Bench in one of the assessee's cases in ITA No. 5417/Mum/2016 for the AY. 2007-

08, where the ITAT under similar circumstances held that *when the dispute between the parties is with regard to proper head under which the amount received towards excess of recovery from outgoings is to be assessed, the same cannot be considered as furnishing inaccurate particulars of income, which attracts penalty u/s. 271(1)(c) of the Act.* Ld. AR further submitted that the facts involved in the present appeals are also identical to the facts which have been already considered by the Tribunal. The case is squarely covered in favour of the assessee, therefore, the penalty levied by the AO u/s. 271(1)(c) of the Act may be deleted. The Ld. AR further referring to the additional grounds of appeal taken first time before the Tribunal, challenging the validity of penalty orders passed by the AO in the light of the vague notice issued u/s. 274 r.w.s. 271(1)(c) of the Act, submitted that the AO has issued vague notice without striking inapplicable portions in the notice i.e., whether the penalty has been initiated for concealment of particulars of income or for furnishing of inaccurate particulars of income, without application of mind to arrive at a satisfaction. Therefore, consequent penalty proceedings become *void ab initio* and liable to be quashed. In this regard he relied upon the plethora of judicial precedents,

including decision of the Hon'ble Supreme Court in the case of CIT Vs. SSA'S Emerald Meadows (2016) [242 Taxman 180] (SC).

10. Ld. DR on the other hand submitted that it is a clear case of furnishing of inaccurate particulars of income, which is evident from the fact that the assessee has claimed deduction u/s. 24 of the Act towards maintenance and other charges along with rental income derived from property under let which is otherwise not allowable as per the provisions of the Act. When the assessment has been reopened to tax, excess deduction claimed u/s. 24 towards maintenance and other charges, the assessee has filed revised return, withdrawing the claim. If the case is not reopened u/s. 147, the assessee would have escaped from the tax net in respect of excessive deduction claimed u/s. 24. Therefore, there is no merit in the argument of the assessee that it has filed complete details in respect of income in the return filed u/s. 139(1) of the Act.

11. As regards the additional ground taken by the assessee, Ld. DR argued that the AO has initiated penalty proceedings for furnishing inaccurate particulars of income and which is flown from the satisfaction arrived at during the course of assessment proceedings, where AO has arrived at a clear satisfaction under

which charge, the penalty is leviable. Therefore, mere non-striking of inapplicable portion in the notice of the penalty proceedings, more particularly when the assessee has filed its explanation in reply to notice issued u/s. 274 r.w.s. 271(1)(c) of the Act cannot be considered as fatal, which vitiate whole proceedings.

12. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The AO levied penalty u/s. 271(1)(c) of the Act, in respect of difference between income re-computed on the basis of return filed u/s. 139(1) of the Act and return filed in response to notice u/s. 148 of the Act, as per which there is a difference between income allocable to Members of AOP. According to the AO, although the assessee is not liable to pay taxes on its income, in view of the specific provisions of Section 166, the fact remains that the assessee has claimed excessive deduction u/s. 24 of the Act, which resulted in reduction of income taxable in the hands of the Members of AOP. Therefore, he opined that it is a clear case of furnishing 'inaccurate particulars of income'. We find that identical issue has been considered by the ITAT, Mumbai 'G' Bench in the case of ITO Vs.

Vaswani Chambers in ITA No. 5417/Mum/2016 for the AY. 2007-08, where under identical set of facts, the Tribunal held that *when the dispute between the assessee and the department is with regard to proper head under which the amount received towards excess of recovery from outgoings to be assessed* and it is also fact that similar method of computing house property income was accepted in the preceding assessment years, there is no reason for the AO to allege that assessee has deliberately furnished inaccurate particulars of income, so as to evade payment of taxes. The relevant observations of the Tribunal are as under:

"6. We have considered the rival submissions and perused the material on record. As could be seen from the facts on record, in the original return of income for the impugned assessment year, the assessee while computing house property income has reduced an amount of Rs. 1,05,85,862/- from the rent received/receivable on account of 'excess of recovery from outgoings'. However, in response to notice issued u/s. 148 of the Act, the assessee agreeing with the view of the Assessing Officer, withdrew the deduction claimed and offered the amount of Rs. 1,05,85,862/- as 'Income from other sources'. Thus, from the aforesaid facts, it is clear that the assessee has furnished full particulars of its house property income including the maintenance charges received by it. This is further vindicated from the fact that from the computation of income of the assessee, the Assessing Officer having found that the deduction u/s. 24 of the Act has been wrongly claimed, re-opened assessment u/s. 147 of the Act. Thus, it is evident, the dispute between the assessee and the department is with regard to the proper head under which the amount received towards 'excess of recovery from outgoing' is to be assessed. It is also a fact on record that similar method for computing house property income was adopted by the assessee in the preceding assessment years and the department has also accepted it. Thus, on overall consideration of facts and material on

record, we are of the opinion that the assessee has not furnished inaccurate particulars of income so as to invite the rigours of section 271(1)(c) of the Act. That being the case, we do not find any infirmity in the order of the CIT(A) in deleting the penalty imposed".

13. In this view of the matter and consistent with the view taken by the Co-ordinate Bench, we are of the considered view that mere change of head of income which resulted in enhancement of income, which is allocable to Members of AOP, cannot be considered as furnishing of inaccurate particulars of income, which attracts penalty u/s. 271(1)(c) of the Act. Therefore, we direct the AO to delete penalty levied u/s. 271(1)(c) of the Act.

14. The assessee has taken additional ground, challenging validity of notice issued u/s. 274 r.w.s. 271(1)(c) of the Act. Since, we have already deleted penalty levied by the AO on merits by following the Co-ordinate Bench decision in assessee's group cases for earlier year, we do not deem it to decide the additional ground taken by the assessee, challenging the validity of notice and consequent penalty order passed by the AO. Hence, the additional grounds taken by the assessee are dismissed.

15. In the result, this appeal of assessee is partly allowed.

16. Since, the facts are identical and issues are common in the remaining appeals, as per our earlier discussion in ITA No. 3007/Mum/2018 herein above, by following the Co-ordinate Bench decision in assessee's own case for earlier year, we direct the AO to delete the penalty levied u/s. 271(1)(c) of the Act in these appeals also. Grounds in all these appeals are partly a7

17. To sum-up, all the appeals are partly allowed.

Order pronounced in the open court on 01st day of February, 2019

Sd/-	**sd/-**
(SANDEEP GOSAIN)	(G. MANJUNATHA)
न्यायिक सदस्य/JUDICIAL MEMBER	लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai; दिनांक/Dated : ____ February, 2019

TNMM

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai
4. आयकर आयुक्त / CIT, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asst. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

	Details	**Date**	**Designation**
1	Draft dictated on	23.01.2019	Sr.PS/PS
2	Draft Placed before author	24.01.2019	Sr.PS/PS
3	Draft proposed & placed before the Second Member		JM/AM
4	Draft discussed/approved by Second Member		JM/AM
5	Approved Draft comes to the Sr.PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	File sent to the Bench Clerk		Sr.PS/PS
8	Date on which the file goes to the Head clerk		
9	Date on which file goes to the AR		
10	Date of Dispatch of order		
11	Draft dictation sheets is enclosed	Yes	