आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ -"ए", चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA Nos. 41 to 44/CHD/2017**

निर्धारण वर्ष / Assessment Years : 2008-09, 2009-10, 2010-11 & 2012-13

The DCIT, Central Circle-1, Chandigarh	बनाम	Sh. Kulwant Singh. H.No. 1047, Sector 71, Mohali
स्थायी लेखा सं./PAN NO: ABZPS4962R		
Appeal against the order of CIT(A)-3, Gurgaon dated 28.10.2016		

C.O. **Nos. 16 to 19/CHD/2018**

(In आयकर अपील सं./ **ITA Nos. 41 to 44/CHD/2017**)

निर्धारण वर्ष / Assessment Years : 2008-09, 2009-10, 2010-11 & 2012-13

Sh. Kulwant Singh. H.No. 1047, Sector 71, Mohali	बनाम	The DCIT, Central Circle-1, Chandigarh
स्थायी लेखा सं./PAN NO: ABZPS4962R		
Appeal against the order of CIT(A)-3, Gurgaon dated 28.10.2016		

आयकर अपील सं./ **ITA No. 387/CHD/2017**

निर्धारण वर्ष / Assessment Year : 2011-12

The DCIT, Central Circle-1, Chandigarh	बनाम	Sh. Kulwant Singh. H.No. 1047, Sector 71, Mohali
स्थायी लेखा सं./PAN NO: ABZPS4962R		
Appeal against the order of CIT(A)-3, Gurgaon dated 30.12.2016		

C.O. **No. 30/CHD/2018**

(In आयकर अपील सं./ **ITA No. 387/CHD/2017**)

निर्धारण वर्ष / Assessment Year : 2011-12

Sh. Kulwant Singh. H.No. 1047, Sector 71, Mohali	बनाम	The DCIT, Central Circle-1, Chandigarh
स्थायी लेखा सं./PAN NO: ABZPS4962R		
Appeal against the order of CIT(A)-3, Gurgaon dated 30.12.2016		

आयकर अपील सं./ **ITA Nos. 51 to 54/CHD/2017**

निर्धारण वर्ष / Assessment Years : 2007-08, 2009-10, 2010-11 & 2011-12

The DCIT, Central Circle-1, Chandigarh	बनाम	Smt. Jaswant Kaur H.No. 1047, Sector 71, Mohali
स्थायी लेखा सं./PAN NO: ACLPK6637Q		
Appeal against the order of CIT(A)-3, Gurgaon dated 28.10.2016		

C.O. **Nos. 26 to 29/CHD/2018**

(In आयकर अपील सं./ **ITA Nos. 51 to 54/CHD/2017**)

निर्धारण वर्ष / Assessment Years : 2007-08, 2009-10, 2010-11 & 2011-12

Smt. Jaswant Kaur H.No. 1047, Sector 71, Mohali	बनाम	The DCIT, Central Circle-1, Chandigarh
स्थायी लेखा सं./PAN NO: ACLPK6637Q		
Appeal against the order of CIT(A)-3, Gurgaon dated 28.10.2016		

IN DIVISION BENCH, 'B', CHANDIGARH

आयकर अपील सं./ **ITA Nos. 45 to 47/CHD/2017**

निर्धारण वर्ष / Assessment Years : 2008-09, 2009-10, & 2011-12

The DCIT, Central Circle-1, Chandigarh	बनाम	Smt. Manjit Kaur, #201, Sector 16-A, Chandigarh
स्थायी लेखा सं./PAN NO: AETPK0153M		
Appeal against the order of CIT(A)-3, Gurgaon dated 28.10.2016		

C.O. **Nos. 20 to 22/CHD/2017**

(In आयकर अपील सं./ **ITA Nos. 45 to 47/CHD/2017**)

निर्धारण वर्ष / Assessment Years : 2008-09, 2009-10, & 2011-12

Smt. Manjit Kaur, #201, Sector 16-A, Chandigarh	बनाम	The DCIT, Central Circle-1, Chandigarh
स्थायी लेखा सं./PAN NO: AETPK0153M		
Appeal against the order of CIT(A)-3, Gurgaon dated 28.10.2016		

आयकर अपील सं./ **ITA Nos. 48 to 50/CHD/2017**

निर्धारण वर्ष / Assessment Years : 2008-09, 2010-11 & 2011-12

The DCIT, Central Circle-1, Chandigarh	बनाम	Sh. Paramjit Singh, H.N o.4197, Sector 68, Mohali
स्थायी लेखा सं./PAN NO: AEKPS5692A		
Appeal against the order of CIT(A)-3, Gurgaon dated 28.10.2016		

C.O. **Nos. 23 to 25/CHD/2017**
(In आयकर अपील सं./ **ITA Nos. 48 to 50/CHD/2017)**
निर्धारण वर्ष / Assessment Years : 2008-09, 2010-11 & 2011-12

Sh. Paramjit Singh, H.N o.4197, Sector 68, Mohali	बनाम	The DCIT, Central Circle-1, Chandigarh
स्थायी लेखा सं./PAN NO: AEKPS5692A		
Appeal against the order of CIT(A)-3, Gurgaon dated 28.10.2016		

निर्धारिती की ओर से/Assessee by : Sh. Pankaj Bhalla, CAs
राजस्व की ओर से/ Revenue by : Smt. Chanderkanta, Sr.DR

सुनवाई की तारीख/Date of Hearing : 15.02.2019
उदघोषणा की तारीख/Date of Pronouncement : 20.03.2019

आदेश/Order

Per Sanjay Garg, Judicial Member:

The captioned appeals by the Revenue and corresponding Cross objections by the assessee arise from the common orders for different assessment years passed by the Ld. Commissioner of Income Tax (A)-3, Gurgaon [hereinafter referred to as 'CIT(A)'] in case of each of the assessee.

2. Since the common issue relating to the levy of the u/s 271(1)(c) is involved in all the appeals, hence, these were heard together and are being disposed of by this common order.

3. The brief facts relating to the issue under consideration are that the assessees here-in-above are the promoters and directors of M/s Janta Land Promoters Pvt Ltd. The original returns u/s 139(1) of the Income-tax Act, 1961 (in short 'the Act') for different assessment

years by the assessees were filed within the due dates prescribed for the same, detailed as under:

Name of the assessee	*A.Y.*	*Date of filing*
Kulwant Singh	*2008-09*	*23.09.2008*
Kulwant Singh	*2009-10*	*30.07.2009*
Kulwant Singh	*2010-11*	*29.07.2010*
Kulwant Singh	*2012-13*	*29.09.2012*
Kulwant Singh	*2011-12*	*28.09.2011*
Manjit Kaur	*2008-09*	*10.12.2008*
Manjit Kaur	*2009-10*	*31.07.2009*
Manjit Kaur	*2011-12*	*28.09.2011*
Paramjit Singh	*2008-09*	*31.03.2009*
Paramjit Singh	*2010-11*	*31.07.2010*
Paramjit Singh	*2011-12*	*28.09.2011*
Jaswant Kaur	*2007-08*	*31.03.2008*
Jaswant Kaur	*2009-10*	*31.07.2009*
Jaswant Kaur	*2010-11*	*27.09.2010*
Jaswant Kaur	*2011-12*	*28.09.2011*

The assessees in their income tax returns had disclosed / offered certain incomes as detailed below for different assessment years as under the head 'income from other sources' with the remarks "*subject to no explanation*" and paid due taxes thereupon.

Name of assessee	*Assessment year*	*Amount*
Sh. Kulwant Singh (M.D. of M/s Janta Land Promoters Ltd and M/s JLPL Infrastructure)	*2008-09*	*1,66,80,000/-*
	2009-10	*1,93,00,000/-*
	2010-11	*2,10,00,000/-*
	2011-12	*39,00,12,600/-*
	2012-13	*94,50,000/-*
	2013-14	*4,70,00,000/-*
Sh. Paramjit Singh (Director of M/s Janta Land Promoters Ltd.,)	*2008-09*	*2,50,000/-*
	2010-11	*4,00,000/-*
	2011-12	*2,29,000/-*
	2012-13	*10,00,000/-*

Smt. Majit Kaur (Director of Janta Land Promoters Ltd and M/s JLPL Infrastructure)	*2008-09*	*90,00,000/-*
	2009-10	*70,00,000/-*
	2011-12	*2,23,00,000/-*
Smt. Jasawant Kaur (w/o Mr. Kulwant Singh)	*2007-08*	*2,50,000/-*
	2009-10	*2,20,33,720/-*
	2010-11	*60,00,000/-*
	2011-12	*85,00,000/-*

4. Thereafter, a search and seizure operation was carried out by the Department u/s 132 of the Act on 2.5.2012 at the business premises of the aforesaid Janta Group as well as residential premises of the promoters and directors of the company. It is pertinent to mention here that all the returns up to assessment year 2011-12 were filed before the date of search and for assessment year 2012-13, the due date for filing the return u/s 139 of the Act had not expired. It is further pertinent to mention here that no incriminating material was found during the search action. Thereafter, the assessee as per prescribed procedure filed the returns u/s 153A of the Act which was same / identical to the original returns of income filed by the assessee u/s 139(1) of the Act. The assessment u/s 153A of the Act read with section 143(3) of the Act was completed by the Assessing officer for all the assessment years as per returned income and no additions etc. were made. During the assessment proceedings, the Assessing officer had asked about the sources of the aforesaid income offered / declared by the assessee regarding which the common explanation given by the assessees was that the same was from speculation in the sale / purchase of the agricultural land, however,

no records were being maintained by the assessee in this regard and therefore, the income was offered u/s 69A 'subject to no explanation'. Since the assessees could not satisfactorily explain the sources of income, the Assessing officer, therefore, invoked the Explanation 1 to section 271(1)(c) of the Act and initiated penalty proceedings. The assessee reiterated that he had no records or evidence relating to the source of income so earned. Therefore, the Assessing officer levied the penalty u/s 271(1)(c) of the Act, observing as under:-

> *"10. Based on above discussion the following conclusions may be drawn*
>
> > *A. The assessee has deposited various amounts in cash in her hank accounts, offered the same in his return of income under the head "Income from other "sources", has not submitted any explanation regarding the source of the same either during assessment proceedings or current penalty proceedings.*
> >
> > *B. The case of the assessee is covered under explanation 1(A) of 271(l)(c) of the I T Act. As well as various judgments of superior courts.*
>
> *11. Sufficient opportunities to present her case has been afforded to the asSessee. The replies filed by the assessee have been considered and found to be not correct.*
>
> *11. Based on the above discussion, I am satisfied that this is a fit case for imposition of penalty in terms of Sec. 271(l)(c) of the I.T.Act,1961."*

5. Being aggrieved by the identical penalties levied by the Assessing officer for different assessment years, the assessees preferred appeals before the Ld. CIT(A). The Ld. CIT(A) considering

the submissions of the assessees deleted the penalty / penalties so levied by the Assessing officer u/s 271(1)(c) of the Act observing as under:-

"4.1 I have considered the appellant submissions.

Penalty u/s 271(1) (c) leviable for concealment of income or for furnishing inaccurate particulars of income. This is not a case of concealment of income as held by the AO in the Penalty order.

4.2 In this regard, it is seen that the amount on which penalty has been imposed by the AO has been declared by the appellant himself as his income under the head "Income Surrendered" during the year amounting Rs. 1,66,80,000/-.

4.3 1 have also perused the assessment order in the appellant's case for the year under consideration, in which the issue of surrendered income has been considered by the AO and accepted.

4.4 There is no net effect of the AO's assessment order passed as the returned income of the appellant has been accepted. In these circumstances, it. cannot be held as a case of furnishing of inaccurate particulars of income, though not discussed by the Assessing officer in the penalty order.

4.5 Penalty u/s 271(l) (c) is leviable with regard to "the tax sought to be evaded". In the appellant case, the retuned income and the assessed income are same. There was no tax sought to be evaded.

4.6 It has been held in the case of B.C. Srinivas Shetty 128 ITR 294 (SC) that when the computation provisions fail, the charging provisions cannot he applied.By the same logic, when the computation provisions u/s 271(l)(c) fail, there being no tax sought to be evaded, penalty there under cannot be levied either, as the said provision is rendered unworkable.

4.7 Para 8 of the above referred judgment of the Hon'ble Apex is reproduced as
under:-

"Section 45 charges the profits or gains arising from the transfer of a capital asset to income-tax. The asset must be one which falls within the contemplation of the section. It must bear that quality which brings s. 45 into play. To determine whether the goodwill of a new business is such an asset, it is permissible, as we shall presently show, to refer to certain other sections of the head " Capital gains ". Section 45 is a charging section. For the purpose of imposing the charge, Parliament has enacted detailed provisions in order to compute

the profits or gains under that head. No existing principle or provision at variance with them can be applied for determining the chargeable profits and gains. All transactions encompassed by s. 45 must fall under the governance of its computation provisions. A transaction to which those provisions cannot be applied must be regarded as never intended by s. 45 to be the subject of the charge. This inference flows from the general arrangement of the provisions in the I. T. Act, where under each head of income the charging provision is accompanied by a set of provisions for computing the income subject to that charge. The character of the computation provisions in each case bears a relationship to the nature of the charge. Thus, the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section. Otherwise, one would be driven to conclude that while a certain income seems to fall within the charging section there is no scheme of computation for quantifying it. The legislative pattern discernible in the Act is against such a conclusion. It must be borne in mind that the legislative intent is presumed to run uniformly through the entire conspectus of provisions pertaining to each head of income. No doubt there is a qualitative difference between the charging provision and a computation provision. And ordinarily the operation of the charging provision cannot be affected by the construction of a particular computation provision. But the question here is whether it is possible to apply the computation provision at all if a certain interpretation is pressed on the charging provision. That pertains to the fundamental integrality of the statutory scheme provided for each head."

4.8 It has thus, been held by the Apex Court that where the charging provisions fail, the provisions relating to the levy of penalties consequent to non-compliance with the charging provisions must also fail.

5.1 1 have perused the judicial pronouncements relied upon by the AO and the same are found not to be applicable in the case of the appellant as the facts of the case are different as discussed here under:-

5.1.1 ***Integrated Technology Solutions (P) Ltd****. v/s ITO (2015) 55 Taxmann.com 338 (MumbaiTrib.)*

In the above referred case, the assessee had claimed bad debts in the original return filed and thereafter filed revised return and withdrew claim of bad debts. The AO accepted revised computation filed during assessment proceedings and also levied Penalty u/s 271(l)(c).

Thus the facts of the case are different from the appellant's

case as the claim made in the original return was withdrawn in the revised return filed.

5.1.2 ***Hamirpur Distt. Cooperative Bank Ltd vs DCIT*** *[2012] 25 Taxinann.com 306 Lackhnow- Trib.}*

In the above referred case, penalty was imposed as the amount claimed as deduction by the assessee did not even qualify to be regarded as 'expenditure'

Thus, The facts of the case are completely different from the case of the appellant.

5.1.3 ***S. Sathyanarayanan vs ACIT [2014]*** *50 Taxmaun.com 200 {Madras}*

In the above referred case, during the course of search conducted under section 132 in the business premises and the residential premises of the father of the assessee, certain amount of cash books of account and documents in respect of the assessee were seized. The AO issued notices to the assessee filed the return of income disclosing certain income. The AO scrutinized the assessment and in respect of each assessment year, the Assessing officer made additons as undisclosed income and initiated penalty proceedings.

The facts of the case are different as in this case discussed above, the assessee had disclosed the said income in the return filed in response to the notice u/s 153C after-certain amount of cash, books of accounts and documents in respect of assesses were seized during the search and was not a case of voluntary disclosure as in the case of the appellant.

5.1.4 ***MAK DATA (P) Ltd Vs. CIT-II*** *{2013} 38 Taxmann.com 448 (SC)*

In this case, the appellant filed its return declaring certain income. During the course of the assessment proceedings, it was noticed by the AO that certain documents were impounded in the course of survey proceedings in the case of sister concern of the assessee. Thereafter, a show cause was issued by the AO in response to which the assessee made an offer to surrender a sum of R.s. 40.74 lakhs with a view to avoid litigation and bar peace. The AO completed the assessment wherein amount surrendered was brought to tax under the head Income from other sources and thereafter penalty was imposed u/s 27l (l) (c).

It was held by the Apex court that the surrender of income on this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted. Consequently, it is clear that the assessee had no intention to declare its true income.

Though the facts of the case are different as the assessee in the

referred case filed its return declaring certain income and thereafter surrendered a sum after *being* ***confronted by the AO with documents impounded in the survey proceedings and thereafter penalty imposed, whereas the appellant in the case under consideration had disclosed income in the return filed u/s 139.***

Further, the decision of the Apex Court in fact supports the case of the appellant as the income surrendered in the return filed was voluntarily, so as to declare his true income.

As discussed above, it has been held in the case of B.C. Srimvas Shetty by the Apex Court that when the computation provisions fail, (the charging provisions cannot be applied. By the same logic, when the computation provisions u/s 271(l)© fail, there being no tax sought to be evaded, penalty there under cannot he levied either, as the said provision is rendered unworkable. The computation of penalty with respect to the tax at Rs. 51,54,120/- is therefore contrary to the provisions of Income Tax Act. Keeping in view the aforesaid facts, the penalty imposed in this case is deleted. The grounds of appeal are hence allowed.

As the similar issue is involved in all the other years (AY) 2009-10, A.Y 2011-12, and AY 2012-13), the penalty imposed in all these years is also deleted.

6. As a result, the appeal(s) of the appellant arc allowed in all the years under consideration i,e. AY 2008-09, AY 2009-10, AY 2010-11, and AY 2012-13."

6. Now Revenue has come in appeals agitating the action of the CIT(A) in deleting the penalties, whereas, the assessees apart from taking certain legal grounds/pleas have also filed the cross objections with certain additional grounds in support of their contention that the penalty otherwise is not leviable.

7. We have heard the rival contentions and have also gone through the record. So far as the appeals of the Revenue are concerned, the Ld. DR has not only addressed the oral arguments but has also submitted written submissions. The crux of the arguments of the Ld. DR has been that heavy amounts were deposited in their bank

accounts by the assessees and then declared in their returns of income spread over six years totaling to Rs. 60.02 crores. That the volume of transactions to earn Rs. 60.02 crores would be many times of this amount. Such volume of transactions spread over six years undertaken by four different individuals could not be without maintenance of the proper records. Therefore, the explanation of the assesseese that they have not maintained any accounts in this respect was not bonafide and, thus, the assessees have failed to disclose truly and fully all the material facts relating to the computation of their total income. Thus, the condition laid down in Explanation 1(B) to section 271(1)(c) of the Act was not fulfilled and, therefore, Assessing officer has rightly imposed / levied penalty. That as per Explanation 1 to section 271(1)(c) of the Act, it was not necessary for the Assessing officer to add or to disallow something to attract the penalty provisions. Further, as per the Explanation 4(c) read with Explanation I to section 271(1)(c) of the Act, it is a case of deemed tax sought to be evaded whereupon the Assessing officer rightly levied the impugned penalty. Moreover, there was no evidence produced by the assessees to prove that the income undisclosed in the returns of income was earned in that particular year. That the onus was on the assessees to truly and fully disclosed all the material facts relating to the computation of total income, which had not been discharged by them.

8. On the other hand, Ld. Counsel for the assessee has submitted that it was not a case of concealment or furnishing of inaccurate particulars of income. That all the facts with regard to the income

were declared in the original return itself. That even otherwise, no concealment of income was detected by the Assessing officer during the course of assessment proceedings. The returned income of the assessees was accepted as such, not only in the original assessment proceedings carried out either u/s 143(1) or 143(3) of the Act but also in the assessment proceedings carried out u/s 153A of the Act, Even, in respect of the some of the assessment years i.e. assessment years 2007-08, 2008-09 and 2009-10 stood completed and had not abated as on the date of search on 2.5.2012 and since no incriminating material was found during the search action, hence, the Assessing officer otherwise was precluded from making any addition in respect of those assessment years in the assessment proceedings carried out u/s 153A of the Act. That Explanation 1 to Section 271 was not applicable in the facts of the case. Further, that even explanation given by the assessee that the aforesaid additional income was earned by speculation in the sale / purchase of agricultural land had been duly mentioned in Rule 9 Report submitted before the Income Tax Settlement Commission (in short 'ITSC'). Even the Explanation regarding the source and manner was accepted by the Department also in one of the case of Shri Kulwant Singh, assessee for assessment year 2013-14, wherein, penalty proceedings initiated u/s 271AAA were dropped by accepting the above explanation regarding the source of income from speculation in property business and after duly considering the order of the ITSC and Rule 9 Report. It has been submitted that, even otherwise, the explanation relating to the source of income has no role to play in

context of the provisions of section 271(1)(c) of the Act. That the provisions of section 271(1)(c) of the Act are since penal provisions they have to be strictly construed. Further, that the disclosure made by the assessees was 'voluntary disclosure' and no concealment was detected by the Department. That even otherwise Explanation 4 was not attracted in this case. That the purpose of Explanation 4 of section 271(1)(c) was that the quantum of penalty imposable for concealment of income should be with reference to the tax sought to be evaded instead of income concealed. That tax sought to be evaded shall be difference between the tax determined in respect of total income assessed and that tax that would have been payable, had the income, other than the concealed income, been total income. That it was never the intention of the Parliament to include declared income in the ambit of concealed income for the purpose of levy of penalty u/s 271(1)(c) of the Act. The Ld. Counsel for the assessee, therefore, has submitted that since the declared income and assessed income in this case was same and that the returns filed by the assessees were under the same head without any change of disturbance, the penalty u/s 271(1)(c) of the Act was not warranted in this case. Apart from that, the counsel has also contended on the additional ground regarding defect in the notice of penalty taken in the Cross objections.

9. In rebuttal of the above arguments of the assessee, the Ld. DR has submitted that since the assessee had failed to disclose the source of the declared income, hence, the assessee had concealed the particulars of income, therefore, the first limb of the provisions of

section 271(1)(c) of the Act was duly attracted. Further that as per the Explanation 4(c) read with Explanation I to section 271(1)(c) of the Act, the income, the particulars relating to which has been concealed by the assessee, is to be considered for computing the tax sought to be evaded. That the assessments for the assessment years 2010-11, 2011-12, and 2012-13 were pending as on the date of search and, hence, they stood abated and, therefore, in the assessment framed u/s 153A of the Act, the Assessing officer was competent to initiate the penalty proceedings. That a specific query was raised by the Assessing officer with regard to the source of income during the assessment proceedings and upon failure of the assessee to explain the source, the penalty proceedings were rightly initiated for concealment of particulars of income. So far as the Rule 9 Report and the findings of the ITSC was concerned, the case before the ITSC was that of the company Janta Land Promoters Pvt Ltd., and not of the assessees in their individual capacity and, hence, any findings or report relating to the company was not applicable in the individual case of the assessee. Finally, has been submitted that if plea of the assessee for deleting the penalty on voluntary disclosure was to be accepted, than it would be unfair on the persons who have availed of voluntary disclosure Scheme said such VDS-2016 and PMGKY-2016 as they had paid penalty @ 25% and 10% respectively for voluntary disclosure of their unaccounted income in these schemes. Further, it would also be unfair to the persons who have duly offered the taxes on the money deposited in the bank u/s 69A of the Act during demonetarization and had to pay tax @ 60% plus surcharge @ 25%

totalling to. 75% tax u/s 115 BBE of the Act, apart from penalty u/s 271 AAC of the Act @ 10% w.e.f. 1.4.2017. Further, that a specific charge was levied by the Assessing officer in the penalty notice regarding the concealment of particulars of income and, as such, there was no defect in the notice.

10. We have heard the rival contentions and have also gone through the record. Since the legal plea taken by the counsel for the assesses in relation to the appeals relating up to assessment years 2010-11 wherein the original assessment proceedings already stood completed and not abated as on the date of search action and that no incriminating material found during the search action go to the root of the case and is crucial to determine the very validity of the initiation of penalty proceedings in an assessment framed u/s 153A of the Act, hence the same is taken first for adjudication. The Ld. Counsel for the assessees in this respect has relied upon various judicial decisions including the decision of the Hon'ble Bombay High Court in the case of 'CIT Vs. Murli Agro Products Pvt Ltd', (2014) 49 taxman.com 172 (Bom.), ITA No.36 of 2009 and in the case of 'CIT Vs. Continental Warehousing Corporation' ITA No. 523 of 2013 reported in (2015) 279 CTR 0389 (Bombay) and of the Hon'ble Delhi High Court in the case of 'CIT Vs. Kabul Chawla' 234 Taxman 300 (Delhi) and subsequent decision of the Delhi High Court in the case of 'Principal CIT Vs. Meeta Gutgutia Prop M/s Ferns 'N' Petals", ITA 306/2017 and others decided vide order dated 25.5.2017. to submit that if no incriminating material is found during the search

action, the addition in the case of already concluded assessment cannot be made while framing assessment u/s 153A of the Act. The ld. Counsel has submitted that similar proposition in relation to the penalty proceedings also. That since no penalty proceedings were initiated during the original assessment proceedings and that since original assessment proceedings stood already completed as on the date of search action, the Assessing officer was precluded from initiating assessment proceedings thereby levying the penalty u/s 271(1)(c) of the Act in the case of already concluded assessment proceedings by way of revisiting the issues.

11. We find force in the above contentions raised by the Ld. Counsel for the assessees. Admittedly, the returns up to the assessment year 2010-11 in relation to the captioned appeals were filed by the assessee much prior to the date of search action and on the date of search action, the original assessment proceedings already stood completed and were not abated and no incriminating material was found during the search action. The Hon'ble High Courts in the case of 'CIT Vs. Murli Agro Products Pvt Ltd',(supra) 'CIT Vs. Continental Warehousing Corporation'(supra) 'CIT Vs. Kabul Chawla' (supra) and subsequent decision of the Delhi High Court in the case of 'Principal CIT Vs. Meeta Gutgutia Prop M/s Ferns 'N' Petals", ITA 306/2017 and others decided vide order dated 25.5.2017, wherein, the Hon'ble Courts have been unanimous to hold that if no incriminating material is found during the search action, the addition in the case of already concluded that in the absence of any

incriminating material found during the search action, no addition can be made into the income of the assessee by way of revisiting the issue in the case in which the original assessment stood completed. Applying the similar proposition, even when the Assessing officer is precluded from making any addition in the absence of any incriminating material found during the search action in the assessment proceedings carried out u/s 153A of the Act in which the original assessment proceedings stood completed and not abated, the Assessing officer, in our view, is also precluded from initiate the penalty proceedings u/s 271(1)(c) of the Act in case of already concluded assessment in the absence of any incriminating material found during the search action. Even it is not the case of the Assessing officer that there was any attempt or overt act on the part of the assessee to evade payment of due taxes. Under the circumstances, we hold that the action of the Assessing officer in initiating the penalty in the assessment proceedings carried out u/s 153A of the Act was not justified and the consequential levy of penalty being illegal is not sustainable in the eyes of law for the cases relating up to AY 2010-11. We order accordingly.

12. Another legal ground taken by the assessee which goes to the root of the case is that so far as the assessment year 2012-13 is concerned, the Assessing officer was not justified initiating or levying penalty u/s 271(1)(c) of the Act. That for the year under consideration, the penalty proceeding , if any, that could be initiated was to be under the provisions of section 271AAA of the Act as the assessment year 2012-13, falls in the definition of specified previous

year as defined under the provisions of section 271AAA of the Act. That as per the provisions of sub section (3) of section 271 AAA, 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) to section 271 AAA of the Act.

For the sake of convenience, the provisions of section 271AAA are produced as under:-

> ***"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 undersection 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."

13. A perusal of the above provisions reveals sub section (3) to section 271AA of the Act bars the levy of penalty under the provisions of section 271(1)(c) of the Act in respect of undisclosed income referred to in sub section (1). The undisclosed income has also been defined under the provisions of section 271AAA of the Act, as reproduced above, which refer to the income found during the search action but not recorded in the books of account or otherwise not disclosed before the date of search to the competent Income-tax

authorities as referred to in the provisions reproduced above of section 271AAA. Admittedly, in this case, no incriminating material was found during the search action and, hence, no undisclosed income of the assessee was found during the course of search. In view of this, the provisions of section 271AAA of the Act are not attracted in this case. However, it is pertinent to mention here that despite the Revenue authorities having not found any undisclosed income of the assessee during the search action, the assessees in the return of income for the assessment year under consideration suo motu declared the income, which the assessees explained to have earned from the speculation in the sale and purchase of agricultural land. However, it was stated that no record was maintained in respect of the aforesaid property transactions and, hence, the assessee himself offered the same under the head 'income from other sources' and paid the taxes at the maximum slab rate.

14. In view of this, though, we are of the view that the legal plea taken by the assessee that the provisions of section 271(1)(c) of the Act are not attracted because the relevant provisions of section 271AAA were applicable, is not tenable, yet we are of the view that otherwise, the provisions of section 271(1)(c) of the Act are not attracted in this case in view of our discussion made in the subsequent paras to this order.

15. Before proceedings further, we deem it fit to first discuss the relevant provisions of section 271(1)(c) of the Act as they stood during the relevant period / assessment year under consideration.

" ***271.*** *(1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person—*

…….

(c) has concealed the particulars of his income or furnished inaccurate particulars of [such income, or]

……

he may direct that such person shall pay by way of penalty,—

…..

[(iii) in the cases referred to in clause (c) or clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits.

Explanation 1.—Where in respect of any facts material to the computation of 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, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.

…

[Explanation 3.—Where any person fails, without reasonable cause, to furnish within the period specified in sub-section (1) of section 153 a return of his income which he is required to furnish under section 139 in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (i) of sub-section (1) of section 142 or section 148 and the Assessing Officer or the Commissioner (Appeals) is satisfied that in respect of such assessment year such person has taxable income, then, such person shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his income in respect of such assessment year, notwithstanding that such person furnishes a return of his income at any time after the expiry of the period aforesaid in pursuance of a notice under section 148.]

Explanation 4.—For the purposes of clause (iii) of this sub-section, the expression "the amount of tax sought to be evaded",—

[(a) in any case where the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished has the effect of reducing the loss declared in the return or converting that loss into income, means the tax that would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income;

(b) in any case to which Explanation 3 applies, means the tax on the total income assessed [as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid before the issue of notice under section 148;

(c) in any other case, means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished."

16. A perusal of the above referred to section 271(1)(c) of the Act reveals that there are two parts of this section. The first part speaks about the charge which may invite penalty i.e. a person has concealed '**particulars**' of his income or furnished inaccurate particulars of income, he may be directed to pay certain sum by way of penalty as penalty. Now, the second part speaks about the quantum of amount payable. As per clause (iii), the Assessing officer may direct such a person against whom the above charge is established to pay in addition to the tax, if any, payable a sum which is not less than, but which shall not exceed three times, the amount of tax sought to the evaded by a reason of such concealment of particulars of income or furnishing of inaccurate particulars of income.

17. Now, Explanation 1 strongly relied upon by the Ld. DR speaks about of deeming fiction regarding the concealment of particulars of income which speaks that if a person fails to offer an 'explanation' or which is found by the concerned income tax authorities to be false or such person could not substantiate in respect of any fact material to the computation of his total income, then the amount added or disallowed in computing total income of such person as a result thereof, shall be deemed to represent the income in respect of which particulars have been concealed. Further, as per the Explanation 3, where a person fails to furnish within the stipulated period his return of income for any assessment year and thereafter, the concerned income tax authority, either the Assessing officer or the CIT (A) finds that in respect of such assessment year, such person has taxable income, then such person shall be deemed to have concealed the particulars of his income in respect of such assessment year, notwithstanding that such person furnishes a return of his income at any time after expiry of the period aforesaid in pursuance of a notice u/s 148 of the Act. Vide Explanation 4, the term "the amount of tax sought to be evaded" has been defined / explained for the purpose of computation of levy of penalty.

18. A per clause (a) to Explanation 4, where the amount of income tax in respect of which particulars have been concealed or inaccurate particulars of income have been furnished, has the effect of reducing the loss declared in the return or converting that loss into taxable income, then the tax sought to be evaded will the amount

which would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars of income have been furnished had such income been the total income; meaning thereby there should be a resultant effect of reducing the loss declared or converting that loss into income by the act or omission of the concerned person for concealment of income or furnishing of inaccurate particulars of income. Then as per the clause (b) of Explanation 4, wherein, in a case to which Explanation 3 applies i.e. where the concerned person fails to file within the stipulated period a return of income despite having taxable income, in that case, the tax sought to be evaded will be the tax on the total income assessed but reduced by the amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid before the issue of notice u/s 148 of the Act.

As per the above said provision what is material is the evasion of the tax and in that scenario, if a person does not file a return and, hence, does not disclose his particulars of income and meaning thereby concealed his particulars of income but if he before the issuance of notice for the reopening of the assessment u/s 148 of the Act, had deposited due taxes and the resultant addition after assessment does not create any liability to pay any further tax, there will be no tax sought to be evaded.

19. Now coming to the relevant clause (c) to Explanation 4, which is residuary clause which speaks that in any other case, the difference between the total income assessed and the tax that would

have been chargeable, had such total income been reduced by the amount of income in respect of which particulars have been concealed which means that the tax payable on the income in respect of which particulars have been concealed or inaccurate particulars of income furnished.

20. A collective reading of all the three clauses reveal that for the calculation of the quantum of penalty, it is not the income in respect of which particulars have been concealed or furnished or inaccurate particulars of income furnished that is relevant but it is the resultant addition to the income of the assessee on account of such concealed particulars of income or furnishing of inaccurate particulars of income. If despite the detection of concealment of income or furnishing of inaccurate particulars of income, in the resultant effect, there is no addition into the income of the assessee or the assessee has already paid taxes on such income in respect of which particulars have been concealed or inaccurate particulars of income have been furnished, then, as per Explanation 4, there will be no tax sought to be evaded and thereby no penalty will be leviable u/s 271(1)(c) of the Act. In our view, clause (c) to Explanation 4 is a residuary clause and can not be segregated and independently interpreted in divorce to clauses (a) or (b) of Explanation 4 to give giving it an entirely different meaning and any such an interpretation, will not be a correct interpretation of the statutory provision. A collective reading of the entire provisions of section 271(1)(c) of the Act reveal beyond doubt that what is material is the resultant addition to the taxable income of an assessee which may

invite penalty under the relevant provisions of section 271(1)(c) of the Act. Though the words used in the first part, i.e. charging provision are '**Particulars'** of income, however, for levy of penalty it is not the '**Particulars'** of income but rather the 'quantum of income itself, that is added to the taxable income of the assessee is relevant for the purpose of calculation of the amount of penalty leviable as per the aforesaid provision. Explanation 4 to section 271(1)(c) was introduced vide Taxation Law Amendment Act, 1975. The relevant part of Circular No. 204 dated 24.7.1976 giving explanatory note on the aforesaid inserted provisions reads as under:-

> *"61.11 New Explanation 4 defines 'the amount of tax sought to be evaded'. According to the definition, this expression will ordinarily mean the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of which particulars have been concealed. In a case, however, where on setting off the concealed income against any loss incurred by the assessee under other head of income or brought forward from earlier years, the total income is reduced to a figure lower than the concealed income or even to a minus figure, 'the tax sought to be evaded' will mean the tax chargeable on the concealed income as if it were the total income. Another exception to the general definition of the expression 'tax sought to be evaded' given earlier is a case to which Explanation 3 applies. Here, the tax sought to be evaded will be the tax chargeable on the entire total income assessed."*

21. Even in the Explanation 1, what is relevant is any fact material to computation of total income of any person regarding which such person fails to offer an '**Explanation**' or Explanation which is found to be false by the Income-tax authorities or an Explanation which is

not able to substantiate, then, the amount added or disallowed in computing total income of such person as a result thereof deemed to represent the income in respect of which particulars have been concealed. So, firstly what is relevant is the material fact to the computation of total income. The word 'computation' here is relevant which means that the fact must be material which has the effect of any addition or disallowance in the income to be computed after the assessment proceedings and it has also been provided that the amount added or disallowed into the self-assessed income represents the income, particulars of which has been concealed and further a combined reading of the sub sections (a), (b) (c) and Explanation 4 would show that tax sought to be evaded is the tax payable on such amount in respect of which particulars have been concealed. The word '**Explanation'** here is not to be applied broadly to include explanation regarding each and every fact or particulars of income such as the source of income, manner of earing of income etc., rather, the word 'explanation' here has a limited scope, whereby, it has restricted that the offering of explanation that the material fact which had been detected by the Assessing officer has a result of addition of disallowance into the income of the assessee and the assessee has no explanation that why the same be not treated as taxable income of the assessee for that relevant year. The words 'particulars of income' though in general will have a wide and broader aspect as to of the relevant particulars such as the source of income, manner of earning of income and genuineness of transaction etc., however, the second part of this section 271(1)(c) of the Act has limited the above wider

scope and for the purpose of computation of penalty, stress is given on the resultant addition of an amount to the income of the assessee. The tax thereupon represents the tax sought to be evaded and the penalty can be levied upon such concealed income equal to a sum which may be 100% of 300% of the amount of tax sought to be evaded.

22. So far as the arguments of the Ld. DR that such an interpretation would defeat the purpose of provisions of section 115BBE substituted by Taxation Law (2nd Amendment) Act, 2016 w.e.f. 1.4.2017 and section 271AAC of the Act w.e.f. 1.4.2017. In our view, the above contention of the Ld. DR is not tenable. The relevant section 115 BBE and section 271AAC for the sake of convenience are reproduced as under;-

> ***115BBE.*** *(1) Where the total income of an assessee,—*
>
> *(a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or*
>
> *(b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a),*
>
> *the income-tax payable shall be the aggregate of—*
>
> *(i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and*
>
> *(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).*
>
> *(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance [16][or set off of any loss] shall be allowed to the assessee under any provision of this Act in*

computing his income referred to in clause (a) [16a][and clause (b)] of sub-section (1).”

Section 271AAC

“271AAC. *(1) The Assessing Officer may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE:*

Provided *that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished under section 139 and the tax in accordance with the provisions of clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.*

(2) No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the income referred to in sub-section (1).

(3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.”

23. Prior to substitution of sub section (1) of section 115BBE w.e.f. 14.2017, the section 115 BBE was inserted by Finance Act 2012 w.e.f. 1.4.2013, which reads as under:-

(1) Where the total income of an assessee includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, the income-tax payable shall be the aggregate of—

*(*a*) the amount of income-tax calculated on income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of thirty per cent; and*

*(*b*) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (*a*).*

16. Inserted by Finance Act, 2016 w.e.f, 1-4-2017

16a Inserted by Finance Act, 2018 w.e.f. 1-4-2017”

24. It is pertinent to mention here that prior to 1.4.2013, there was no section 115BBE. Section 115 BBE was inserted vide Finance Act 2012 to tax the income referred to in section 68, 69, 69A, 69 B, 69 C or 69D at a flat rate of 30%. Prior to 1.4.2013, any unexplained income of the assessee either offered by himself or detected by the Assessing officer are to be taxed as per the normal rate as prescribed from time to; time. However, during the period of demonetarization in the year 2017, it was noticed that the assessees had started taking benefit of the provisions of sections 68, 69, 69A and started depositing their unaccounted for / undisclosed income in the bank account declaring the same as their income of the assessment year under consideration in the return of income and paying taxes @ 30% as provided u/s 115BBC of the Act, act of the assessee was taken as contributory factor in failure of the Voluntary Disclosure Scheme. Hence, to curb this practice, the government substituted sub section (1) of section 115 BBE to provide that wherein in the return of income furnished by the assessee, the total income of an assessee includes an income referred to in sections 68, 69, 69A, 69B and 69 C or section 69D, or otherwise added or determined by the Assessing officer during the assessment proceedings under the above provisions, then the tax at the flat rate of 60% will be payable on such an income disclosed or determined. Further to mark a difference between the self-declared income in the aforesaid provisions and the cases where the Assessing officer determined /detected such income in the aforesaid sections 68, 69, 69A, 69B and 69 C or section 69D, the penalty provisions of section 271AAC comes into operation which

provides that if such an income is suo moto declared by the assessee in his return, then no penalty is leviable and if it is otherwise detected by the Assessing officer, in addition to the tax payable u/s 115BBC, such an assessee will be liable to pay penalty equal to a sum computed @ 10% of the tax payable on such unexplained income as per the provisions of section 115BBE of the Act. A cumulative reading of section 271(1)(c) read with section 115 BBE and 271AAC, would reveal that it is not barred under the Act for an assessee to declare an income in his return as an unexplained income. It may otherwise be detected or found by the Assessing officer also during the assessment proceedings. Prior to 1.4.2013, the tax on such unexplained income either declared by the assessee or detected by the Assessing officer was payable at a normal rates applicable. However, if such an unexplained income was declared by the assessee himself in a return filed u/s 139(1) of the Act, and then no penalty was leviable. However, if such an unexplained income is determined by the Assessing officer on account of concealment of material facts or on account of furnishing of inaccurate particulars of income relating to the computation of income which has the resultant effect of some addition into the taxable returned income then the penalty is liable to be imposed and computed taking into consideration the amount of tax so payable by the assessee on the such unexplained income detected or added by the income tax authorities.

25. It is pertinent to mention here that even though, the Government noticed that the aforesaid provisions of sections 68, 69A, 69B, 69C and 69D can be misused by the assessees to circumvent the ‘Voluntary

Disclosure Scheme' and to get their income into rotation / accounted for by paying 30% tax and declaring the same under the aforesaid sections in the return of income yet, the Government still has not come with the penalty provisions in respect of such voluntarily declared income in the return of income, rather has chosen to enhance the tax rate form 30% to 60%. The penalty u/s 271AAC of the Act is leviable only if such an income is not declared in the return of income. In view of our above discussion of the matter, since in these cases the assesse have decaled the income in question in the return of income itself, the tax at the maximum rate slab duly paid thereupon, the returned income accepted as such without any addition on this issue, hence, there was amount of tax sought to be evaded, hence, it cannot be said to be a fit case for levy of penalty u/s 271(1)(c) of the Act.

26. Even otherwise, a perusal of clause (iii) to section 271(1) reveals that as per the relevant provisions, the Assessing officer may direct a person who as per clause (c) has concealed the particulars of income or furnished inaccurate particulars of such income to pay by way of penalty, a sum which shall not be less than but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income. So as per the above provisions for the levy of penalty there must be some amount of tax sought to be evaded which should be by reason of the concealment of particulars of income or furnishing of inaccurate particulars of income of such income by the assessee. Hence, if there is no amount of tax sought to be evaded by reason of concealment of particulars of income

or inaccurate particulars of income, the penalty cannot be computed or to say that the penalty under the provisions will be 'Nil'. It is pertinent to mention here that Explanation–1 to section 271(1)(c) of the Act also provides that if a person fails to offer an explanation or explanation offered is found to be false by the Income-tax Authority or he fails to substantiate such explanation, and that fails to prove the such explanation is bonafide, then the amount added or disallowed in computing the total income of such person as a result thereof, shall for the purpose of clause (c) be deemed to represent the income in respect of which particulars have been concealed. It becomes clear from the reading of Explanation -1 that there must be some addition or disallowance in computing the total income of such person in respect to which it is deemed that he has evaded the payment of tax for computing the penalty so leviable. . However, if there is no addition to the income of the assessee either by way of the positive addition or by way of reducing the losses etc., then there may be no amount of tax which the assessee which can be said to be sought to be evaded by the assessee, then under the circumstances, there will not be any penalty leviable or payable by the assessee as per the provisions of the Act and in the circumstances, no penalty will be leviable u/s 271(1)(c) of the Act.

27. Even otherwise, the Ld. Counsel for the assessees has invited our attention to the pages 59, 67, 69, of paper book-2 and pages 114, 153, 190 and 227 of paper book-I to show that the assessees not only explained to the Assessing officer during the assessment proceedings

regarding the source, mode and manner of earning of the aforesaid income i.e. from speculation / sale and purchase in the agriculture land and in the respective replies of the assessees given to the Assessing officer which were not only the part of the assessment records but also the part of the Rule 9 report submitted by the Assessing officer before the Income Tax Settlement Commission during the course of proceedings u/s 245D (4)of the Act in the case of M/s Janta Land Promoters Ltd. The Ld. Counsel for the assessee has also invited our attention to the penalty order of the Assessing officer passed in the case of assessee Mr. Kulwant Singh for the assessment year 2013-14, whereby, the Assessing officer had initiated the proceedings u/s 271AAA of the Act, however, the same were dropped accepting the explanation of the assessee. A perusal of the relevant documents and replies filed by the assessees before the Assessing officer, it reveals that respective assessees though have duly explained the source, made and manner of the earning of income which has been disclosed by the assessee in the return of income, however, they could not substantiate the said earning of income with documentary evidence. At the same time, even the Assessing officer has not brought or put in any case that the income in question declared by the assessees was not from the sources, mode and manner explained, rather, the source of income was from some other transactions to the knowledge of the Assessing officer. It is a case where the assessees could not prove by evidence the source of income earned, however, at the same time the Assessing officer has also not disapproved the explanation given by the assessees. For invoking the

penal provisions of section 271(1)(c) of the Act, there must be an overt act on the part of the assessee of concealment of income or furnishing of inaccurate particulars of income. Since the explanation given by the assessees has not been proved to be false or otherwise disapproved by the Assessing officer, hence, under the circumstances, it cannot be said that the assessees have concealed the particulars of income or furnished inaccurate particulars of income so as to attract the provisions of section 271(1)(c) of the Act. The assesses, themselves, declared income in question and paid the due taxes. There was no difference between the offered income and the taxed income. The Hon'ble Calcutta High Court in the case of 'Commissioner of Income Tax Kolkata-II Vs. Palani Investment & Industries Corporation Ltd.', (2016) 67 taxman.com 60 has held that the disclosure and concealment cannot coexist. That when a finding is recorded that the assessee has indeed disclosed, then the conclusion as regards concealment is bad. Even it cannot be said that the assessee furnished inaccurate particulars of income. There was no material on record to indicate that the particulars furnished by the assessee were factually incorrect. Under the circumstances, even otherwise, on merits, the penalty u/s 271(1)(c) of the Act is not attracted in this case.

In view of the discussion made above, we do not find any merit in the appeals of the revenue, the same are accordingly dismissed.

Now coming to the cross objection filed by the assesses.

C.O. Nos. 16 to 19/Chd/2018, 26 to 29/Chd/2018, 30/Chd/2018 & 20 to 22/Chd/2018 and 23 to 25/Chd/2018:

28. So far as the Cross objections, as taken by the assessees for relevant assessment years are concerned, the same are delayed by 378 to 429 days. Separate applications have been filed for the condonation of delay, wherein, it has been pleaded that since the assessees had already raised the legal grounds under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963, hence, the assessees were under bonafide belief that they need not required to file the separate cross objections.

29. We are not convinced with the above explanation given by the assessees for condonation the long delay ranging from 378 days to 429 days in filing the present cross objections. Moreover we have already dealt with the legal objections taken by the assessees which go to the root of the case while adjudicating the appeals of the Department. However, we do not deem it fit at this stage to look in the issues raised by the assessees which requires examination of factual aspects of the case. The applications of the assessees for condonation of delay in filing the cross objections, are, therefore, dismissed and consequently the cross objections filed by the assessees are dismissed. However, the dismissal of the Cross objections filed by the assessees will not have any bearing on our adjudication given on the legal issues raised by the assesses while deciding the appeals of the revenue.

In view of this, all the appeals of the Revenue and Cross objections filed by assessees are hereby dismissed.

Order pronounced in the Open Court on 20.03.2019.

Sd/-	Sd/-
(बी,आर.आर. कुमार / B.R.R. KUMAR)	**(संजय गर्ग / SANJAY GARG)**
लेखा सदस्य/ Accountant Member	**न्यायिक सदस्य /Judicial Member**

दिनांक/Date: 20.03.2019
"आर.के."

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant