IN THE INCOME TAX APPELLATE TRIBUNAL
"H" Bench, Mumbai

Before Shri Ramit Kochar, Accountant Member
and Shri Ravish Sood, Judicial Member

ITA No.298/Mum/2019
(Assessment Year: 2013-14)

Harish C. Mehta Times Square, 602 B, 'B' Wing, Nr. Marol Metro Station, Andheri (East), Mumbai – 400 059	Vs.	Pr. CIT-24, Piramal Chambers, Mumbai – 400 012

PAN – AACPM2021R

(Appellant) **(Respondent)**

Appellant by: Shri Reepal C. Tralshawala, A.R
Respondent by: Shri S. Srinivas, D.R

Date of Hearing: 13.05.2019
Date of Pronouncement: 06.06.2019

O R D E R

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the Pr. Commissioner of Income Tax-24, Mumbai (for short 'Pr. CIT') under Sec.263 of the Income Tax Act, 1961, dated 05.12.2018. The assessee has assailed the order of the Pr. CIT before us on the following grounds of appeal:

"1. In law and on the facts and in circumstances of the appellant's case, the Hon'ble PCIT erred in concluding that while dropping penalty u/s 271(1(c), the ld. AO. has not applied his mind by observing that the noting in the proceeding sheet in this regard was a single statement. Further, that the penalty was dropped by not passing a detailed speaking order. Thus, the action of the PCIT in drawing such conclusion/observation is erroneous and thus the order passed u/s 263 deserves to be cancelled.

2. In law and on the facts and in circumstances of the appellant's case, the Hon'ble PCIT erred in law in having assumed jurisdiction u/s 263 of the Act in order to substitute her subjective view in place of judicious view taken by the AO on the same set of facts and thus such assumption of power is unlawful and unjust and therefore the order passed u/s 263 shall be quashed.

3. *In law and on the facts and in circumstances of the appellant's case, the Hon'ble PCIT erred in ignoring the sequence of the events on consideration of which the ld. AO. had dropped the penalty proceeding and therefore the order passed u/s 263 on such incomplete appreciation of facts shall be quashed.*

4. *In law and on the facts and in circumstances of the appellant's case, the Hon'ble PCIT erred in treating the submission of the assessee as unsubstantiated without bringing any cogent material on record to prove such allegation and thus the order passed u/s 263 deserves to be annulled.*

5. *The appellant craves to leave, add, amend, alter or modify the ground or grounds of Appeal on or before the hearing."*

2. Briefly stated, the assessee who is engaged in the business of testing, commissioning and designing of electrical power plants and providing training courses had e-filed his return of income for A.Y 2013-14 on 30.09.2013, declaring total income at Rs.1,87,94,640/-. The return of income was processed as such under Sec. 143(1) of the I-T Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2). Thereafter, assessment was framed by the A.O under Sec.143(3) on 21.03.2016 at a total income of Rs. 2,20,56,640/- after making an aggregate addition of Rs.32,60,000/- on the basis of un-reconciled AIR information viz. (i) un-reconciled cash deposits of Rs. 24,17,000/-; and (ii) un-reconciled FDRs: Rs.8,42,587/-. The A.O while framing the assessment also initiated penalty proceedings under Sec. 271(1)(c). However, the penalty proceedings initiated u/s 271(1)(c) were thereafter dropped by the A.O on the basis of the following noting in the order sheet:

> "28.04.2016 Authorized Representative Ms. Choksey attended the hearings, after going through the reply for 271(1)(c) dated 04.04.2016 & in the reply of the assessee is satisfactory and thus penalty is hereby dropped."

3. The Pr. CIT after perusing the assessment records of the assessee, observed, that the A.O in the course of the penalty proceedings had without application of his mind dropped the penalty proceedings that were initiated u/s 271(1)(c). In fact, the Pr.CIT was of the view that the A.O was in error in accepting the incorrect claim of the assessee that the inadvertent omission on his part to offer certain income in the form of cash deposits/FDRs in the return of income for

the year under consideration was thereafter voluntarily rectified by him even before the same was pointed out by the A.O. In sum and substance, he was of the view that the A.O had erred in accepting the aforesaid assertion of the assessee, which in fact was factually incorrect. As is discernible from the records, the Pr. CIT held a conviction that the assessee had came forth with the disclosure of the understated income in the course of the assessment proceedings after it was gathered by him that the understated income was well within the notice of the department. Accordingly, the Pr. CIT was of the view that it was absolutely incorrect on the part of the assessee to claim that the disclosure of the additional income was voluntarily made by him. Apart there from, the unsubstantiated claim of the assessee that it was the lapse on the part of the earlier chartered accountant which had led to the understatement of income, also did not find favour with the A.O. On the basis of his aforesaid observations the Pr. CIT issued a 'Show Cause' notice, dated 12.06.2018 to the assessee and called upon him to explain as to why the order passed by the A.O dropping the penalty proceedings may not be revised under Sec. 263 of the I-T Act. In reply, it was submitted by the assessee that as he had came up with a voluntarily disclosure of the understated income which was inadvertently omitted to be offered in the return of income, therefore, the A.O had after due application of mind dropped the penalty proceedings which were initiated in the assessment order under Sec. 271(1)(c). It was thus, the claim of the assessee, that as the A.O had after necessary deliberations and application of mind to the facts of the case dropped the penalty proceedings, therefore, the Pr. CIT was divested of his jurisdiction under Sec. 263, as the same would tantamount to re-examining the issue which had already been inquired into by the A.O. However, the Pr. CIT was not persuaded to accept the aforesaid reply of the assessee for multiple reasons viz. (i)

that, as the assessee after the selection of his case for scrutiny assessment in September, 2014, had much subsequent thereto by his letter dated 01.03.2016 offered cash deposits of Rs.25 lac to Rs 30 lac as his income, and that too on the day when the copy of AIR details were given to him, therefore, it was incorrect on his part to claim that he had voluntarily offered the understated income before its detection by the department; (ii) that, if the case of the assessee would not have been selected for scrutiny assessment proceedings, then the aforesaid undisclosed income would have gone unnoticed; (iii) that, though penalty proceedings under Sec. 271(1)(c) were initiated as a part of the assessment order under Sec. 143(3), however, no appeal against the said order was filed by the assessee; (iv) that, the A.O should not have been carried away by the assesses plea of voluntary disclosure etc., as the same would not necessarily release him of the mischief of the penal proceedings; and (v) that, dropping of the penalty proceedings by the A.O without passing a reasoned order was palpably erroneous, insofar, as it was prejudicial to the interest of the revenue.

4. The assessee by his reply dated 18.09.2018 tried to rebut the aforesaid observations of the Pr. CIT on multiple grounds viz. (i) that, though the case was selected for scrutiny assessment, however, the notice issued did not state the reason as to why the case was picked up for scrutiny assessment; (ii) that, the disclosure was made by him voluntarily and without any detection or issuance of any 'show cause' notice by the department; (iii) that, he learnt about the understatement of certain deposits/FDRs when the same was brought to his notice by the new counsel who was appointed by him on 20.02.2016, which thereafter was followed by suo motto offer of the said income within a time span of 8 days i.e on 01.03.2016, therefore, no intentional delay could be attributed to him for offering of such income in the course of the assessment proceedings; (iv) that, as no

addition which was not acceptable by the assessee was made in the assessment order passed under Sec.143(3), therefore, there was no need for him to prefer an appeal against the same; (v) that, the A.O after extensive deliberations on the facts leading to understatement of income by the assessee had thereafter dropped the penalty proceedings; (vi) that, the fact that the A.O had not passed a detailed order while dropping the penalty proceedings could not be put to service for drawing of adverse inferences against the assessee in order to justify initiation of action under Sec. 263; and (vii) that, as the penalty was dropped by the A.O on the basis of an 'order sheet' noting, thus, in the absence of any 'order' passed by him, the same could not have been revised under Sec. 263.

5. The Pr. CIT after deliberating at length on the contentions advanced by the assessee was however not persuaded to accept the same. Insofar, the claim of the assessee that jurisdiction under Sec. 263 would not take within its sweep dropping of the penalty proceedings by the A.O under Sec. 271(1)(c) on the basis of an 'order sheet' noting was concerned, the same was rejected by the Pr. CIT. Further, the Pr. CIT adverting to the facts of the case observed that the claim of the assessee that he had voluntarily made the disclosure of understated income in the course of the assessment proceedings was factually incorrect. In order to drive home his aforesaid conviction, the Pr. CIT referred to the chronological events starting from the receipt of information by the A.O as regards the understated income of the assessee till the framing of the assessment under Sec. 143(3), as under :

Sr. No.	Date	Remarks/Events
1.	29.08.2013	The information was reported to the department on the issue of cash deposits of Rs.24,17,000/- in M/s. Model Co-operative Bank Ltd. by the assessee for the A.Y. 2013-14

2.	04.09.2014	The notice u/s. 143(2) was issued and served upon the assessee on 04.09.2014
3.	16.09.2014	Assessee submitted details in response to 143(2)
4.	28.10.2015	Assesse's representative Mr. Vipul Mehta CA attended the hearing and submitted the details of fixed assets, plant and service charges paid.
5.	16.02.2015	Assesse's representative Mr. Vipul Mehta attended the hearing and submitted the details of salary and delivery challans for the addition of fixed assets and source for capital investment.
6.	23.12.2015	Assesse's representative Mr. Vipul Mehta attended the hearing and submitted the details of service tax returns, details of business promotion expenses and repairs and maintenance expense.
7.	22.02.2016	Assesse's representative –G.K. Choksi sought adjournment as they were appointed as AR on 20.02.2016.
8.	01.03.2016	The copy of the AIR details was given and on the same day, the assessee offered the cash deposits of Rs.25-30 lakhs as the income.
9.	18.03.2016	Assesse's representative Mr. Shreyas Parikh attended the hearing and submitted detailed AIR reconciliation.
10.	21.03.2016	The assessment order u/s. 143(3) of the I.T. Act. 1961 was passed.

Accordingly, it was concluded by the Pr. CIT that the assessee had not voluntarily offered the understated income in the course of the assessment proceedings. In the backdrop of his aforesaid observations, the Pr. CIT was of the view that the A.O without proper application of mind had on the basis of a cryptic order dropped the penalty proceedings which were initiated by him while framing the assessment under Sec. 271(1)(c). As such, the Pr. CIT drawing support of the provisions of Explanation 2 to Sec. 263, observed, that as the dropping of the penalty proceedings under Sec. 271(1)(c) by the A.O without proper application of mind had resulted to an order which was erroneous and prejudicial to the interest of the revenue, thus, set aside his order wherein he had dropped the penalty proceedings u/s 271(1)(c), and directed him to pass a reasoned order after affording a reasonable opportunity of being heard to the assessee.

6. Aggrieved, the assessee has carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee took us through the facts of the case. The ld. A.R in order to buttress his claim that as the A.O after due application of mind had dropped the penalty proceedings which were initiated by him u/s Sec. 271(1)(c), therein took us through the relevant pages of the assesses 'Paper book' (for short 'ABP'). It was submitted by the ld. A.R that on account of an inadvertent omission certain income in the form of cash deposits/FDRs had remained understated by the assessee in his return of income for the year under consideration. It was submitted by him that when the new chartered accountant who was engaged by the assessee brought the aforesaid fallacy to his notice, the assessee without any further loss of time filed a letter on 01.03.2016 with the A.O offering the understated income in form of certain cash deposits of Rs.25 to Rs. 30 lacs as his income. It was submitted by the ld. A.R that the Pr. CIT had proceeded on the basis of misconceived fact that the assessee had came forth with the disclosure of understated income only after the AIR information was made available to him. In order to fortify his aforesaid claim the ld. A.R. took us through a letter dated 01.03.2016 which was filed by the assessee with the A.O on 01.03.2016 (Page 37 of 'APB'). It was submitted by him, that though the AIR information was made available to the assessee by the A.O on 01.03.2016, however, the same was only at 05:45 PM i.e after the assessee had offered the cash deposits of Rs.25 to Rs. 30 lacs as his additional income, which had inadvertently remained understated in his return of income. In order to buttress his aforesaid claim the ld. A.R took us through the AIR information that was made available by the A.O on 01.03.2016, as per which the said details were received by the assessee only at 5:45 PM. (Page 38 of APB). In sum and substance, it was the claim of the ld. A.R that as the assessee on learning about

his inadvertent mistake in understatement of income in the form of certain cash deposits/FDRs, had even prior to its exact quantification, had offered the same voluntarily in the course of the assessment proceedings with the A.O i.e prior to detection on his part, therefore, his bonafides stood clearly established. Accordingly, it was submitted by the ld. A.R that in the backdrop of the aforesaid bonafide and inadvertent mistake on the part of the assessee which had led to understatement of income, that, the A.O after due application of mind had adopted a plausible view and dropped the penalty proceedings which were initiated by him under Sec.271(1)(c). The ld. A.R on the basis of his aforesaid contentions, submitted, that now when the A.O had dropped the penalty proceedings by arriving at a plausible view after due application of mind, therefore, the exercise of the revisional jurisdiction by the Pr. CIT under Sec. 263 was clearly excluded. As regards the reliance placed by the Pr. CIT on the judgment of the Hon'ble Supreme Court in the case of MAK Data Pvt. ltd. Vs. CIT (2013) 358 ITR 593 (SC), it was submitted by the ld. A.R that the facts involved in the case of the assessee were clearly distinguishable as against those involved in the case before the Hon'ble Apex Court. Alternatively, it was submitted by the ld. A.R, that as the A.O had dropped the penalty proceedings under Sec.271(1)(c) by way of an 'order sheet' noting and not on the basis of any 'order', therefore, the Pr. CIT for the said reason also was divested of his jurisdiction to revise the said action of the A.O. On the basis of the aforesaid submissions, it was the claim of the ld. A.R that as the Pr. CIT had wrongly exercised his revisional jurisdiction under Sec.263, therefore, the order passed by him may be set aside and that of the A.O be restored.

7. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the order passed by the Pr. CIT. It was submitted by the ld.

D.R that the Pr. CIT remaining well within the arena of his jurisdiction had validly revised the order passed by the A.O, as he had on the basis of a cryptic 'order sheet' noting dropped the penalty proceedings initiated in the case of the assessee u/s. 271(1)(c). In order to support his claim that the dropping of the penalty proceedings u/s. 271(1)(c) by an A.O on the basis of an 'order sheet' entry could validly be revised under Sec.263, reliance was placed by him on the judgement of the Hon'ble High Court of Patna in R.A. Himmat Singka & Company Vs. CIT (2012) 340 ITR 253. It was submitted by the ld. D.R, that the fact, that the dropping of the penalty proceedings was well within the knowledge of the assessee could safely be gathered from the fact that the same was duly signed by his counsel. On merits, it was submitted by the ld. D.R., that a perusal of the letter dated 01.03.2016 that was filed by the assessee with the A.O, wherein he had asked for the AIR details, revealed that he was aware about the fact that his understated income was reported to the revenue. On the basis of his aforesaid submissions, it was the claim of the ld. D.R that as the A.O without application of mind had dropped the penalty proceedings u/s. 271(1)(c) on the basis of a cryptic order, therefore, the Pr. CIT had rightly set aside his order in exercise of the revisionary jurisdiction under Sec. 263 and restored the matter to his file for de novo adjudication, after affording a reasonable opportunity of being heard to the assessee.

8. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, and also considered the judicial pronouncements relied upon by them. Admittedly, the assessee in his return of income for the year under consideration had understated his income to the extent of Rs.32,60,000/- viz. (i) unreconciled cash deposits in bank: Rs. 24,17,000/-; and (ii) unreconciled FDR's: Rs.8,42,587/-. We find

that the adjudication of the issue before us primarily involves two aspects viz. (i) that, as to whether the assessee had voluntarily disclosed the understated income in the course of the assessment proceedings; and (ii) that, as to whether a voluntary disclosure of the understated income by the assessee in the course of the assessment proceedings would justify dropping of the penalty proceedings initiated under Sec. 271(1)(c). Insofar the issue as to whether the assessee had all on his own voluntarily offered the understated income in the course of the assessment proceedings is concerned, we have extensively deliberated on the chronology of the events in the backdrop of which the aforesaid understated income was disclosed by the assessee in the course of the assessment proceedings. It is the claim of the assessee, that he had offered the understated income of Rs.25 lac to Rs.30 lacs (approx.) for the year under reference, vide his letter dated 01.03.2016. Further, it is submitted by him that though the A.O had made available the AIR information on the very same date i.e 01.03.2016, however, the same was provided to him only after he had already offered the understated income of Rs.25 lacs to Rs.30 lacs (approx.) for tax, vide his aforesaid letter filed on the same day. We have deliberated on the aforesaid contention of the ld. A.R and find substantial force in the same. As is discernible from the AIR information that was made available to the assessee in the course of the assessment proceedings, it stands revealed, that the same was given to him only at 5:45 PM on 01.03.2016. The said factual position had not been controverted by the ld. D.R by placing on record any documentary evidence which would have persuaded us to hold otherwise. Accordingly, it can safely be concluded that the letter dated 01.03.2016 that was filed by the assessee with the A.O (bearing the stamp of the income tax office) during the office hours, was prior to receipt of the AIR information from him. We thus, are of the

considered view that the assessee is correct in claiming that the offer of the understated income of Rs.25 lacs to Rs.30 lacs (approx.) for tax by him was not pursuant to the receipt of the AIR information from the A.O.

9. We shall now advert to the reasons leading to the aforesaid understatement of income in the form of certain cash deposits/FDRs by the assessee in his return of income for the year under consideration. As is discernible from the records, the assessee had on the basis of his letter dated 18.03.2016 that was filed with the A.O in the course of the assessment proceedings, had at length demonstrated the reasons leading to the bonafide understatement of income on his part. On a perusal of the aforesaid reply, it stands revealed that the assessee after perusing the AIR information had inter alia pointed out that cash deposits aggregating to Rs. 3 lac in his bank account did not pertain to the year under consideration, and were in fact relatable to the immediately preceding year i.e A.Y 2012-13. However, due to shortage of time and to avoid protracted litigation the assessee had offered the cash deposits of Rs. 24,17,000/- as his income. Insofar the understatement of income in the form of FDR's is concerned, we find, that the assessee had prepared a reconciliation of the FDRs and had offered the balance amount of unreconciled FDRs of Rs. 8,42,587/- for tax. The assessee referring to the FDR's aggregating to Rs. 6,21,52,202/- reported in the AIR information, had therein stated viz. (i). that, FDR's to the tune of Rs. 27,37,202/- with Bank of India included those held by him in the name of his proprietary concern and one in his name; (ii). that, an error was there on the part of the bank in wrongly reporting FDR's of Rs. 98,60,000/- against his name; (iii). that, FDR's to the tune of Rs. 4,18,83,810/- were made by him with Model Co-operative bank during the year; (iv). that, the balance amount of FDR's of Rs. 76,71,190/- were those corresponding to the

duly disclosed FDR's of Rs. 68,28,603/- which were held by him on 31.03.2008; and (v). that, as for the unreconciled balance of FDR's of Rs. 8,42,587/-, the same were those which were held by him on 31.03.2008 at Rs. 68,28,603/- and had over the years culminated to an amount of Rs. 76,71,190/- during the year under consideration. Accordingly, the unreconciled amount of FDR's had boiled down to an amount of Rs. 8,42,587/-. As observed by us hereinabove, the duly disclosed FDR's of Rs. 68,28,603/- held by the assessee on 31.03.2008 alongwith its interest element had culminated to an amount of Rs. 76,71,190/- during the year under consideration. In fact, the assessee had duly submitted before the A.O that the source of the entire FDR's held by him was either from his regular business books/own saving accounts or wifes accounts/jointly with mother or wife etc., though appearing in his name. It was submitted by the assessee that as some of the FDRs were under auto renewal mode, therefore, it was extremely difficult for him to match the same with the exact figure as the AIR information did not contain an exhaustive details of the said FDR's. As the assessee due to shortage of time (as the assessment was getting time barred by 31.03.2016) could not reconcile the FDR's with those reported in the AIR information, therefore, in order to buy peace of mind and to avoid protracted litigation, he had offered the unreconciled balance of Rs. 8,42,587/- for tax in the course of the assessment proceedings. Accordingly, the assessee had offered the additional income of Rs.32,60,000/- [Rs. 24,17,000/- (+) Rs. 8,42,587/-] for tax in the course of the assessment proceedings.

10. We have given a thoughtful consideration to the aforesaid facts on the basis of which the understated income of Rs. 32,60,000/- was offered by the assessee for tax in the course of the assessment proceedings. As observed by us hereinabove, it stands proved that the

understated income was voluntarily offered by the assessee, vide his letter dated 01.03.2016 i.e prior to receipt of the AIR information from the A.O. Apart there from, as had been extensively deliberated by us hereinabove, the bonafides of the assessee leading to the inadvertent understatement of income in the form of certain cash deposits/FDRs was also clearly backed by bonafide reasons. Our aforesaid conviction is further fortified by the fact that the bank accounts in which the aforesaid cash deposits were made by the assessee, as well as the FDRs under consideration, were duly disclosed by him in his return of income. Admittedly, there was an understatement of income by the assessee in the form of certain cash deposits/FDR's in his return of income for the year under consideration. However, in our considered view, imposition of penalty would be unwarranted in a case where the assessee had committed an inadvertent and bonafide error, and had not intended to or attempted to either conceal its income or furnish inaccurate particulars. Our aforesaid view is supported by the judgment of the **Hon'ble Supreme Court** in the case of **Price Waterhouse Coopers Pvt. Ltd. Vs. CIT (2012) 348 ITR 306 (SC).** As regards the reliance placed by the Pr. CIT on the judgment of the **Hon'be Apex court** in the case of **MAK Data P. Ltd. Vs. CIT (2013) 358 ITR 593 (SC)**, we find that the same is distinguishable on facts. In the aforementioned case the surrender of income of Rs. 40,74,000/- was not voluntary, as it was made by the assessee after detection by the revenue of its undisclosed income on the basis of incriminating documents that were found during the course of the survey proceedings conducted in the case of its 'sister concern'. Accordingly, we are of the considered view that as the assessee in the case before us had voluntarily came forth with the disclosure of the income that was on account of bonafide reasons understated by him in his return of income, therefore, the judgment of the Hon'ble Supreme court in the

case of Mak Data P. Ltd. (supra) being distinguishable on facts would not assist the case of the revenue.

11. Accordingly, we are of the considered view that the A.O finding favour with the claim of the assessee that there was a bonafide mistake on his part in understating the aforesaid income of Rs. 32,60,000/-, which thereafter, in the course of the assessment proceedings was voluntarily offered by him for tax, had thus, dropped the penalty proceedings which were initiated by him u/s 271(1)(c) while framing the assessment. We are of the considered view that the A.O in totality of the facts of the case, had in all fairness, by adopting a plausible view dropped the penalty proceedings which were initiated by him u/s 271(1)(c). As such, we are of a strong conviction that though the Pr. CIT might not have been persuaded to subscribe to the aforesaid view so taken by the A.O, however, we are afraid that the same at least would not have justified exercise of the revisional jurisdiction by him u/s 263 for the sake of substituting his view as against that of the A.O. Insofar the Explanation 2 of Sec.263 relied upon by the Pr. CIT is concerned, we are unable to comprehend as to how the same could have been put into service for dislodging the plausible view arrived at by the A.O. Admittedly, the dropping of the penalty proceedings under Sec. 271(1)(c) by the A.O on the basis of an 'order sheet' noting is not found to be happily worded, however, the same cannot lead to an inference that there was no application of mind by the A.O while so concluding. At this stage, it would be relevant to point out that the Pr. CIT while rushing to the view that there was no proper application of mind by the A.O while dropping the penalty proceedings, had however, failed to consider the reply of the assessee dated 01.04.2016 that was filed by him in the course of the penalty proceedings. In fact, a perusal of the 'order sheet' noting dated 28.04.2016 of the A.O reveals that he had only after being satisfied

with the reply dated 01.04.2016 filed by the assessee, therein concluded that the penalty proceedings initiated under Sec. 271(1)(c) were to be dropped. Our aforesaid view that merely because the A.O had remained silent on a point would not mean that there was no application of mind on his part is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Fine Jewellery (India) Ltd. (2015) 372 ITR 303 (Bom)**. Accordingly, in terms of our aforesaid observations, we are of the considered view that as the A.O in the totality of the facts of the case had arrived at a plausible view that no penalty under Sec. 271(1)(c) was liable to be imposed on the assessee, and therein dropped the penalty proceedings, therefore, merely because the Pr. CIT was not satisfied with the said view of the A.O would not justify revision of his said order. We thus not being persuaded to subscribe to the order passed by the Pr. CIT under Sec. 263, thus, set aside the same and restore the order passed by the A.O dropping the penalty proceedings initiated in the hands of the assessee under Sec. 271(1)(c). Before parting, we may herein observe, that as we have quashed the order passed by the Pr. CIT, therefore, we refrain from adverting to and therein adjudicating the other contentions raised by the assessee before us.

12. The order passed by the Pr. CIT under Sec. 263 is quashed and the order passed by the A.O dropping the penalty proceedings under Sec. 271(1)(c) is restored.

13. The appeal of the assessee is allowed.

Order pronounced in the open court on 06.06.2019

Sd/-	Sd/-
(Ramit Kochar)	(Ravish Sood)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 06.06.2019
Ps. Rohit

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**