

**IN THE INCOME TAX APPELLATE TRIBUNAL "B"**

**(Virtual Court Hearing), BENCH KOLKATA**

**BEFORE SHRI J. SUDHAKAR REDDY, AM & SHRI S. S. GODARA, JM**

**आयकर अपीलसं./I.T.A Nos.2372&2373/Kol/2018**

**(निर्धारण वर्ष / Assessment Years: 2013-14 & 2014-15)**

<b>M/s Suprabha Industries Ltd.</b> Continental Chambers, 15A Hemant Basu Sarani, Kolkata	<b>Vs.</b>	<b>DCIT, Central Circle-4(3), Kolkata</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADCS9389J</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : Shri Miraj D. Shah, A/R

Respondent by : Smt. Ranu Biswas, Addl. CIT

सुनवाईकीतारीख/ Date of Hearing : 19/10/2020

घोषणाकीतारीख/Date of Pronouncement : 22/10/2020

**आदेश / O R D E R**

**Per Shri S. S. Godara:**

These assessee's two appeals for assessment years 2013-14 & 2014-15 arise against the Commissioner of Income Tax (A) - 21, Kolkata's separate orders both dated 27.08.2018 passed in Case No.10527&10538/DCIT,CC-4(3)/CIT(A)-21/KOL/2016-17 involving proceedings u/s 271AAB of the Income Tax Act, 1961; in short 'the Act'; respectively.

Heard both the parties. Case files/records perused.

2. The assessee's identical sole substantive grievance in both these appeals challenges correctness of the lower authorities' action imposing section 271AAB penalties of Rs.44,93,035/- @30% of the alleged undisclosed income of Rs.1,49,76,784/- each by the Assessing Officer in his twin separate orders; both dated 28.09.16 and restricted to 10% each in the CIT(A)'s lower appellate discussion reading as under:

“05. FINDINGS & DECISION:

1. I have carefully considered the submissions of the Ld.AR of the appellant and the observations and findings recorded by the Ld. AO and the factum of the case. In the facts involved in the present case, search action u/s 132 was conducted on 11.04.2013. In the course of search, certain loose papers & documents were seized which inter alia contained the details of commodity dealings by the appellant. With reference to these loose documents, the appellant admitted before the Investigating authorities that they represented his income aggregating to Rs.1,49,76,784/- for the relevant previous year and therefore offered the same to tax in the relevant AY 2013-14. In consonance with his statement so recorded u/s 132(4), the appellant disclosed the income derived from these transactions under the head 'Income from Other Sources' in the return of income filed for the relevant AY 2013-14. The Ld. AO who framed the assessment u/s 143(3) assessed the income of the appellant as returned by him. The Ld. AO however initiated penalty proceedings u/s 271AAB of the Act with reference to such income. Before the Ld. AO the appellant argued that the penalty u/s 271AAB was not applicable since the income of Rs.1,49,76,784/- did not represent his

undisclosed income" within the meaning prescribed in Explanation (c) to Section 271AAB of the Act. The Ld. AO was however not agreeable to the contention put forth by the appellant and held that the appellant's case squarely fell within the ambit of Section 271AAB of the Act. According to Ld. AO since the appellant failed to substantiate the manner in which the income was derived by him, he levied penalty @ 30% on the undisclosed income of Rs.1,49,76,784/- clause (c) of Section 271AAB of the Act.

2. In the appellate proceedings, the Ld. AR of the appellant assailed the impugned order of the Ld. AO on several grounds. The initial contention of the appellant was that the loose documents etc. found & seized in the course of search constituted 'other documents' maintained the normal course of business and hence the entries contained therein did not represent his 'undisclosed income. It was further submitted that no asset, jewellery, money, bullion or any other valuable asset was found corresponding to such income which further fortified that such income did not represent the appellant's undisclosed income. The Ld. AR further objected to the validity of the penalty proceedings since according to him the Ld. AO did not give proper notice in the manner prescribed. The Ld. AR further submitted in the alternate that the penalty, if any, leviable, ought to have been levied under clause (a) i.e. @ 10% instead of clause (c) i.e. 30% as levied by the Ld. AO.

3. After giving a thoughtful consideration to the facts involved in the present case, I do not find much force in the primary contention of the appellant is that the income of Rs.1,49,76,784/- assessed by way of profit derived from commodity dealings etc. did not constitute 'undisclosed income defined in Explanation (c) to Section 271AAB of the Act. In this regard it would therefore be relevant to examine the term 'undisclosed income' as defined in Explanation (c) to Section 271AAB of the Act, which reads as follows:

"Explanation: For the purposes of this Section

(C) "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.]*

*4. From the above definition it shall be noted that the Legislature has assigned specific meaning to the term "undisclosed income". The said meaning is not borrowed from Section 68 to 69D of the Act but the term has been specifically defined for the purposes of levy of penalty Section 271AAB of the Act.*

*5. The two sub-clauses (i) & (ii) contained in clause (c) of Explanation 271AAB which define 'undisclosed income' can be further broken two parts; sub-clause (i) of clause (c) of Section 271AAB which defines "undisclosed income" can be bifurcated as follows:*

*a) any income represented by any entry in respect of an expense recorded in the books of account which is found to be false, or*

*b) any other documents maintained in the normal course which is found to be false;*

*6. Undeniably the appellant's case is not covered by the above two limbs. Neither does the sum of Rs.1,49,76,784/- represents any entry in respect of expense which is found to be false nor has this sum been assessed with reference to any document which is otherwise found to be false.*

*7. I further noted that sub-clause (i) of clause (c) of Explanation 1 to Section 271AAB, also has two limbs, which are as follows:*

*a) any income represented by money bullion, jewellery or other valuable article or thing;*

*or*

*b) any entry in the books of account or other documents or transactions found in the course of a search,*

*shall be treated "undisclosed income" if it was not found 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.*

*8. In the facts involved in the present case, it is evident that the sum of Rs.1,49,76,784/- assessed as appellant's income for the relevant year did not represent any "unexplained money, bullion, jewellery, valuable article or any other asset", for the simple reason that no such asset had been identified either by the Ld.AO and no undisclosed asset came to light as a result of the search conducted by the Investigation Authorities. Accordingly the first limb i.e. (a), is not applicable to the facts of the present case.*

9. The next limb of Section 271AAB defines "undisclosed income" as, any entries

*found in the books of accounts or any documents seized in the course of search which was either not recorded in the (i) regular books on or before the date of Search, "or" (ii) in the documents maintained in normal course of business. In the facts of the present case the appellant is a private limited company formed with the Intention to earn profit. The said company is statutorily required to maintain books of accounts under the provisions of Companies Act, 1956 as well as under provisions of Section 44AA of the Income-tax Act, 1961. Undeniably, the loose documents found & seized in the course of search contained entries regarding income which was not found recorded in the regular books of accounts. Further the loose documents contain mere notings and it cannot be construed as other documents" maintained in regular course of business. In the circumstances such income falls within the scope of Explanation (c) to Sec. 271AAB of the Act.*

*10. The decisions referred to by the appellant are distinguishable in as much as in those cases the assesseees were individuals who were neither maintaining nor were required to maintain books of accounts and the documents found contained entries which did not pertain to the assessee's business but other sources of income. On the peculiar set of the facts involved in that case the Tribunal had found that the loose documents were "other documents" which would enable the assessee as well as the AO to draw up the statement of income and hence did not constitute "incriminating material" or "undisclosed income". However the facts in the present case are different as the appellant is a company which indeed maintains regular books of accounts and the documents, which contained entries of income did not form part of its regular books. The appellant was also unable to support such entries of income with "other documents", eg. contract notes etc. which could in any manner show that such document was maintained in regular course of business. For the reasons set out in the foregoing I agree with the Ld. AO that the sum of Rs. 1,49,76,784/- fell within the meaning of "undisclosed income" as mentioned in Section 271AAB of the Act.*

11. I however find merit in the alternate contention of the appellant that penalty, if any, leviable, ought to have been levied under clause (a) i.e. @ 10% instead of clause (c) i.e. 30% as levied by the Ld. AO. The relevant provisions of Section 271AAB(a) is as follows:

*"The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of July, 2012 49[but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President<sup>50</sup>], the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,*

*(a) a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year, if such 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) on or before the specified date-*

*A) pays the tax, together with interest, if any, in respect of the undisclosed income; and*

*(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;*

*12. In view of the above provisions the appellant was required to satisfy the following Conditions so as to ensure that minimum penalty 10% is levied under Section 271AAB of the Act.*

*(a) Assessee must have admitted the undisclosed income in statement recorded u/s 132(4);*

*(b) Assessee specifies & substantiates the manner in which such undisclosed income was derived*

*(c) Pays Tax & Interest on such undisclosed income before the specified date*

*(d) Files the ROI for specified previous year declaring such undisclosed income therein*

*13. In the facts of the present case search operations were conducted on 11.04.2013 and the Director of the appellant in his statement recorded u/s 132(4) on 12.04.2013 had admitted the undisclosed income during course of search and survey operation. This fact also been admitted by the Ld. AO in the assessment as well as the impugned penalty order. Accordingly condition (a) is satisfied. It is also not in dispute that the appellant has discharged taxes along with interest before the specified date and that such income was disclosed in the return of income filed for the relevant year. In the circumstances even clause (c) & (d) stands satisfied. The only dispute between the appellant and the Ld. AO is regarding clause (b) as according to Ld. AO the appellant did not specify the manner in which such income was derived. I however find that allegation of the Ld. AO to be self-contradictory. By AO's own admission in the assessment order as well as the penalty order, the entries in the loose documents denoted the speculative income derived by the appellant in commodity dealings. The Ld. AR of the appellant has further demonstrated that the Ld. AO never required the appellant to explain the manner of deriving such income in the assessment or the penalty proceedings which further proved that the Ld. AO was satisfied that the income was derived from commodity dealings. On these facts & circumstances, I am of the considered view that the manner in which the income was derived stood evidently specified as well as substantiated. I therefore do not see any reason for the Ld. AO to allege that the appellant had failed to specify & substantiate the manner of deriving such income. For the reasons as aforesaid, I am of the considered view that the clause (b) also stood satisfied and in that view of the matter appellant had fulfilled all the conditions to fall within clause (a) of Section 271AAB of the Act. The Ld. AO is therefore directed to restrict the penalty u/s 271AAB to 10% of the undisclosed income, which works out to Rs.14,97,258/-. The balance amount of Rs.29,95,357/- is therefore deleted.*

*In the result, the appeal of the appellant is "partly allowed". "*

3. We have given our thoughtful consideration to rival pleadings against and in support of the impugned penal action. Learned authorized representative invited our attention to pages 3 to 9 of the paper-book at the outset containing the corresponding incriminating document(s); DKM-4 alleged to have been

found/seized in the course of search dated 11.04.13. His case first of all is that the said document(s) clearly indicate the assessee's corresponding income derived from commodities in both these assessment years. Mr. Shah accordingly pleads that once all these documents form part of the regular books of accounts, the lower authorities' impugned penalties cannot be held to be based on any undisclosed income found/seized during the course of search as defined in section 271AAB Explanation (c)(i)(A) containing the clinching statutory expression "not been recorded on or before the date of search in the books of accounts".

4. Learned counsel's next argument is that the CIT(A)'s findings under challenge that the assessee had very well substantiated the manner of having derived this alleged undisclosed income as provided u/s 271AAB(1)(a) stood duly satisfied; has attained finality and therefore the assessee is entitled for relief against the entire penalty sum. And also that the Assessing Officer's penalty show-cause notices; both dated 31.03.2016, nowhere specified the relevant limb under which the same was sought to be imposed i.e. @ 10%, 20% & 30% of the alleged undisclosed income. He accordingly pressed for deleting the impugned penalties in entirety.

5. Mrs. Ranu Biswas, learned senior departmental representative, strongly supported both the lower authorities' action imposing the impugned penalties. She invited our attention to the Assessing Officer's identical satisfaction in both assessment orders dated 28.09.16 that the assessee had failed to substantiate the manner of having actually derived the above-stated undisclosed income and therefore, the impugned penal action has been rightly initiated.

6. We have given our thoughtful consideration to the foregoing rival pleadings. Suffice to say, we note during the course of hearing that the Assessing Officer had initiated the impugned penalty proceedings after alleging the assessee to have failed to substantiate the manner of having derived its undisclosed income during the course of search dated 11.04.13. Pages 3 to 9 "DKM-4" is the

clinging incriminating document forming basis of the lower authorities' action holding that the same represented undisclosed income u/s 271AAB Explanation (c) of the Act. Learned departmental representative fails to dispute that all these documents formed part of the assessee's books of accounts/documents maintained in the regular course of business. It therefore does not satisfy the foregoing statutory condition of "not been recorded on or before the date of search". The CIT(A)'s findings in last paragraph also support the assessee's case. We find in this factual backdrop that the tribunal's coordinate bench's decision in ITA 2280-2281/Kol/2018 ACIT vs. Smt. Tanuja Mantri dated 15.11.19 pertaining to the very search dated 11.04.13, has upheld the CIT(A)'s identical action deleting section 271AAB penalty since the Assessing Officer had proceeded on the basis of alleged undisclosed income already recorded in the regular books of accounts.

7. Case file also reveals that the Assessing Officer's identical twin show-cause notices; both dated 30.03.16 (supra); nowhere indicated as to under which limb he has sought to initiate the impugned penal action. This tribunal's coordinate bench's decision in CIT vs Smt. Rashmi Jalan ITA No.326/Kol/20 dated 30.09.20 holds that such a lapse on Assessing Officer's parts rendered the entire penal action invalid as follows:

*"8. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-*

*9. The notice issued u/s 274 r.w.s. 271 on 31/03/2015, by the Assessing Officer has been extracted by us above. The charge in this notice is not specified.*

*The Jaipur Bench of the Tribunal in the case of Padam Chand Pungliya (supra) held as follows:-*

*"We further note that in the case in hand, the AO in the show cause notice has neither specified the grounds and default on the part of the assessee nor even specified the undisclosed income on which the penalty was proposed to be levied. For ready reference we reproduce the show cause notices issued by the AO under section 274 read with section 271AAB on 30th March, 2016 and 16th August, 2016 as under :—*

*"No. ACIT/CC-I/JPR/2015-16*

*Dated : 30.03.2016.*

*PENALTY NOTICE UNDER SECTION 274 READ WITH SECTION 271AAB OF THE  
INCOME TAX ACT. 1961.*

PAN - ABDPP 7196A

To,

Sh. **Padam Chand** Pungalia,

2372, MSB Ka Rasta, Johari Bazar,

Jaipur.

*Whereas in the course of assessment proceedings before me for the A.Y. 2014-15, it appears to me that as per sections 274 and 275 read with section 271AAB of the Income-tax Act you are liable for penalty on assessed undisclosed income.*

*You are hereby requested to appear before me at my office Room No. 103 (NA), N.C.R.B., Jaipur at 11.00 A.M. on 28.04.2016 and show cause why an order imposing penalty on you should not be made u/s 271AAB r.w.s. 274 of the Income tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through Authorized Representative, you may reply to show cause in writing on or before the said date which will be considered before any such order is made.*

*Yours faithfully,*

*Sd/-*

*(Sushil Kumar Kulhari)*

*Asstt. Commissioner of Income-tax,*

*Central Circle-1, Jaipur.*

*"No. ACIT/CC-1/JPR/2016-17/928*

*Dated : 16.08.2016.*

*PENALTY NOTICE UNDER SECTION 274 READ WITH SECTION 271AAB OF THE  
INCOME TAX ACT, 1961.*

PAN - ABDPP 7196A

To,

Sh. **Padam Chand** Pungalia,

2372, MSB Ka Rasta, Johari Bazar,

Jaipur.

*Whereas in the course of assessment proceedings before me for the A.Y. 2014-15, it appears to me that as per sections 274 and 275 read with section 271AAB of the Income-tax Act you are liable for penalty on assessed undisclosed income.*

*You are hereby requested to appear before me at my office Room No. 103 (NA), N.C.R.B., Jaipur at 11.00 A.M. on 25.08.2016 and show cause why an order*

*imposing penalty on you should not be made u/s 271AAB r.w.s. 274 of the Income tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through Authorized Representative, you may reply to show cause in writing on or before the said date which will be considered before any such order is made.*

*Yours faithfully,*

*Sd/-*

*(Devangi Swarnkar)*

*Asstt. Commissioner of Income-tax,*

*Central Circle-1, Jaipur.'*

*Thus it is clear that both the show cause notices issued by the AO for initiation of penalty proceedings under section 271AAB are very vague and silent about the default of the assessee and further the amount of undisclosed income on which the penalty was proposed to be levied. Even the Hon'ble Jurisdictional High Court in case of Shevata Construction Co. (P.) Ltd in DBIT Appeal No. 534/2008 dated 06.12.2016 has concurred with the view taken by Hon'ble Karnataka High Court in case of Manjunatha Cotton & Ginning Factory (supra) which was subsequently upheld by the Hon'ble Supreme Court by dismissing the SLP filed by the revenue in the case of SSA's Emerald Meadows (supra). Accordingly, following the decision of the Coordinate Bench as well as Hon'ble Jurisdictional High Court, this issue is decided in favour of the assessee by holding that the initiation of penalty is not valid and consequently the order passed under section 271AAB is not sustainable and liable to be quashed."*

10. *Similarly, the Indore Bench of the ITAT in the case of Shri Ravi Mathur (supra) has held as follows:-*

*"7. As regards the validity of notice under [section 274](#) for want of specifying the ground and default, we find that when the basic condition of the undisclosed income not recorded in the books of accounts does not exist, then the same has to be specified by the AO in the show cause notice and further the AO is required to give a finding while imposing the penalty under [section 271AAB](#). Even if the AO is satisfied and come to the conclusion that the assessee has not recorded the undisclosed income in the books of accounts or in the other documents / record maintained in normal course relating to specified previous year, the show cause notice shall also specify the default committed by the assessee to attract the penalty @ 10% or 20% or 30% of the undisclosed income. There is no dispute that the AO has not specified the default and charge against the assessee which necessitated the levy of penalty under [section 271AAB](#) of the Act. Consequently, the assessee was not given an opportunity to explain his case for specific default attracting the levy of penalty in terms of clauses (a) to (c) of [section 271AAB\(1\)](#) of the Act. The Chennai Bench of the Tribunal in the case of [DCIT vs. Shri R. Elangovan](#) (supra) at pages 7 to 10 has held as under :-*

*" It is clear from the Sub Section (3) of Section 271 AAB that [Sections 274](#) and [Section 275](#) of the Act shall, so far as may be, apply. Sub Section (1) of [Section 274](#) of the Act mandates that order imposing penalty has to be imposed only after hearing the assessee or giving a assessee opportunity of hearing.*

*Opportunity that is to be given to the assessee should be a meaningful one and not a farce. Notice issued to the assessee reproduced (supra), does not show whether penalty proceedings were initiated for concealment of income or for furnishing inaccurate particulars of income or for having undisclosed income within the meaning of [Section 271AAB](#) of the Act. Notice in our opinion was vague. Hon'ble Karnataka High Court in the case of SSA's Emerald Meadows (supra) relying in its own judgment in the case of Manjunatha Cotton and Ginning Factory (supra) had held as under:-*

*"2. This appeal has been filed raising the following substantial questions of law:*

*(1) Whether, omission of assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?*

*(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under [Section 274](#) r.w.s. 271(1)(c) is bad in law and invalid despite the amendment of [Section 271\(1B\)](#) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?*

*(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued under [Section 274](#) without taking into consideration the assessment order when the assessing officer has specified that the assessee has concealed particulars of income?*

*3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under [Section 274](#) read with [Section 271\(1\)\(c\)](#) of the Income Tax Act, 1961 (for short 'the Act') to be bad in law as it did not specify which limb of [Section 271\(1\)\(c\)](#) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of [CIT vs. Manjunatha Cotton and Ginning Factory](#) (2013) 359 ITR 565.*

*4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed".*

*In the earlier case of Manjunatha Cotton and Ginning Factory (supra) their lordship had observed as under:-*

"Notice under [section 274](#) of the Act should specifically state the grounds mentioned in [section 271\(1\)\(c\)](#), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the grounds mentioned in [section 271](#) are mentioned would not satisfy the requirement of law ; The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice are offended. On the basis of such proceedings, no penalty could be imposed on the assessee ; ) taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law ; penalty proceedings are distinct from the assessment proceedings : though proceedings for imposition of penalty emanate from proceedings of assessment, they are independent and a separate aspect of the proceedings ;

The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as *res judicata* in the penalty proceedings. It is open to the assessee to contest the proceedings on the merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared invalid in the penalty proceedings".

View taken by the Hon'ble Karnataka High Court in the above judgment was indirectly affirmed by the Hon'ble Apex Court, when it dismissed an SLP filed by the Revenue against the judgment in the case of SSA's Emerald Meadows (*supra*), specifically observing that there was no merits in the petition filed by the Revenue. Considering the above cited judgments, we hold that the notice issued u/s.274 r.w.s. 271AAB of the Act, reproduced by us at para 5 above was not valid. Ex-consequenti, the penalty order is set aside.

6. Since we have set aside the penalty order for the impugned assessment year, the appeal filed by the Revenue has become infructuous."

In view of the decision of the Chennai Bench (*supra*), the show cause notice issued by the AO in the case of the assessee is not sustainable."

10.1. Similar are the decisions in the other case-law relied upon by the assessee.

11. Applying the propositions of law laid down in these case-law to the facts of the case, we have no other alternative but to hold that the penalty in question is bad in law as the show-cause notice issued by the Assessing Officer does not specify the charge/s against the assessee for levy of penalty, as required by law. Thus, on this ground, the penalty is quashed.

12. Even otherwise, Section 271AAB of the Act, contemplates imposition of a penalty pursuant to the disclosure of income in statement recorded u/s 132(4) of the Act by the assessee. It is an admitted fact that no such statement has been recorded from the assessee. Thus, on this ground also, the levy of penalty fails. Nowhere in the assessment order it is stated that undisclosed income has been assessed. The assessment was made

*u/s 143(3) of the Act and the returned income was accepted. Thus, for all these reasons, we quash the penalty levied u/s 271AAB of the Act and allow this appeal of the assessee.*

We adopt the foregoing detailed reasoning mutatis mutandis and hold that both the learned lower authorities have erred in law and on facts in imposing the impugned penalties against the taxpayer. The same are directed to be deleted therefore.

8. These two assessee's appeals are allowed.

Order is pronounced in the open court on 22.10.2020.

Sd/-  
**(J. Sudhakar Reddy)**  
ACCOUNTANT MEMBER

Sd/-  
**(S. S. Godara)**  
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 22/10/2020

RS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. The Appellant- M/s Suprabha Industries Ltd.
2. The Respondent- DCIT, Central Circle-4(3), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.  
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,  
I.T.A.T, Kolkata Benches,  
Kolkata.