

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 319, 320 & 321/JP/2022  
निर्धारण वर्ष/Assessment Years : 2010-11, 2011-12 & 2012-13

Shri Mangi Lal Kandoi D-91, Amba Bari, Jaipur.	बनाम Vs.	Assistant Commissioner of Income Tax, Central Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACMPK 6560 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar ( Adv.)  
राजस्व की ओर से / Revenue by : Ms. Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 20/09/2022  
उदघोषणा की तारीख / Date of Pronouncement : 13/10/2022

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

These three appeals are filed by the assessee aggrieved from the order of the Commissioner of Income Tax (Appeals)-4, Jaipur [Here in after referred as Ld. CIT(A) ] for the assessment year 2010-11, 2011-12 & 2012-13 dated 29.07.2022, which in turn arises from the order passed by the ACIT, Central Circle-03, Jaipur passed under Section 271(1)(c) of the Income tax Act, 1961 (in short 'the Act') dated 19.03.2020.

2. Since the issues involved in these appeal of the assessee for all three years are almost identical, are common, all these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the Id. AR has submitted that the matter pertaining to Shri Mangi Lal Kandoi in ITA no. 319/JPR/2022 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are exactly identical except the difference in the amount of levy of penalty in other assessment year. The Id. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 319/JPR/2022 is taken as a lead case.

4. Based on the above arguments we have also seen that for all three appeals grounds are similar, facts are similar and arguments were similar and therefore, were heard together and are disposed

by taking lead case facts, grounds and arguments from the folder in ITA No. 319/JPR/2022.

5. Before moving towards the facts of the case we would like to mention that the assessee has assailed the appeal in ITA No. 319/JPR/2022 before us on the following grounds;

“1. In the facts and circumstances of the case the learned CIT(A) has erred in confirming the action of the learned AO in imposing the penalty u/s 271(1)(c) of the Income Tax Act, 1961.

2. In the facts and circumstances of the case the learned CIT(A) has erred in confirming the action of the learned AO in passing the order under section 271(1)(c) of the Income Tax Act, 1961 without striking off the irrelevant portion of the printed show cause notice dated 15.09.2017 viz., furnished inaccurate particulars of income or concealed particulars of such income is bad in law.

3. In the facts and circumstances of the case the learned CIT(A) has erred in confirming the action of the learned AO in passing the order under section 271(1)(c) of the Act is against the principles of judicial consistency and therefore, bad in law.

4. In the facts and circumstances of the case the learned CIT(A) has erred in confirming the action of the learned AO in passing the order under section 271(1)(c) of the Income Tax Act, 1961 is void ab-initio deserved to be quashed as no satisfaction was recorded with reference to concealment of income or furnishing inaccurate particulars of income.

5. In the facts and circumstances of the case the learned CIT(A) has erred in confirming the action of the learned AO in imposing the penalty of Rs. 1,85,400/- u/s 271(1)(c) of the Income Tax Act, 1961.

6. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.”

6. The fact as culled out from the records is that the original return of income was filed on 26.07.2010 declaring total income at Rs. 8,06,240/-. A search was conducted on 18.07.2012 in the case of Kandoi Group, Jaipur to which the assessee belongs. Various assets/books of account and documents were found and seized as per annexure prepared during the course of search. Thereafter, jurisdiction over the case was assigned to Deputy Commissioner of Income Tax, Central Circle-3, Jaipur vide notification u/s 127 of the Income-tax Act, 1961 by the CIT, Jaipur-II, Jaipur issued vide order No: CIT-II/JPR/127/Kandoi Group/12-13/1992 dated 24.12.2012.

7. Accordingly, notice 153A of the Act was issued on 28.01.2013 and in compliance to the notice u/s. 153A return of income was e filed on 14.03.2013 for A. Y. 2010-11 declaring total income of Rs. 8,06,240/-. Further notice u/s 143(2) of the IT Act, 1961 was issued on 07.06.2013 which was served to the assessee.

8. Thereafter, notice u/s. 142(1)/143(2) along with questionnaire was issued on 11.11.2014. Meanwhile, the assessee filed an application before the Hon'ble Income Tax Settlement Commission,

New Delhi [ here in after referred as ITSC ] on 04.03.2015. Various reports including Rule-9 report, reply to Counter Comments under rule 9A and Verification Report were also filed before the Hon'ble ITSC from time to time during the pendency of settlement proceedings, The Hon'ble ITSC, New Delhi passed order u/s 245D(4) of the IT Act rejecting the assessee's application vide S.A. No. RJ/JP-51/2014-15/40-IT on 19.09.2016 stating that “Considering the facts of the case the issues emanating therefrom as discussed in the foregoing pages, and judicial opinion as narrated in the earlier para, we are of the considered opinion that the appellants have failed to make neither a fair and true disclosure, nor given any sound basis for explaining the manner of earning such undisclosed income and working out such income. Hence, the mandatary conditions of section 245C remain unfulfilled. As such, the Commissioner if unable to provide for the terms of settlement as required u/s. 245D(6). Accordingly, the application in both cases, are hereby rejected.” As a result, the proceedings were abated to the assessing officer.

9. The Id. AO has completed the assessment on 15.09.2017 u/s. 143(3) r.w.s. 153B(b)(1) r.w.s. 245A of the Act at Rs. 20,19,995/- as against the returned income of the assessee at Rs. 8,06,240/-. The assessee carried this quantum proceeding in the appeal and the on the disposal of appeal the Id. AO proceeded to levy the penalty u/s. 271(1)(c) of the Act vide order dated 19.03.2020. While passing the order of levying the penalty he has concluded as under :

“The written submission of the assessee’s AR requesting to drop the penalty proceedings has been duly considered but not found acceptable for the reasons that the AR of the assessee gave a generic reply without specifically pointing out that why penalty wouldn’t be levied on concealed income based on the evidences available on record. The assessee has also himself admitted that the amount noted in seized documents are related to advances given by him out of his undisclosed income. However, now he is changing his stand that the same needs to be taxed in the hands of someone else which clearly appears to be an afterthought at this stage. The assessee could not rebut the fact that why penalty should not be levied despite the fact that addition was confirmed by CIT(A) as well. It is pertinent to mention here that had there been no search and seizure action being carried out in this case; this amount of undisclosed income in form of advances could not be brought to tax. Thus, it is a clear case of concealment of income. The case laws cited by the assessee are misplaced and different from the facts of the case.”

Based on the above findings the Id. AO satisfied that the assessee had concealed his income to the tune of Rs. 6,00,000/- for the year

under consideration and it is fit case for levy of penalty u/s. 271(1)(c) of the Act and thereby he has levied the penalty of Rs. 1,85,400/- on an addition of Rs. 6,00,000/-.

10. Being aggrieved, the assessee carried the matter in appeal before the Id CIT(A) and Id. CIT(A) his relevant findings are at para 5. which reads are as under:-

“5.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the penalty order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:

(i) I have perused the order of the AO imposing penalty and detailed submissions made by the Ld. AR including the judgements cited in this regard. The fact remains that during the course of search, the appellant has disclosed Rs. 12.41 Lakh on account of entries made in Annexure A-1, Page 1 & 2 found from his residence, being undisclosed. loans and advances and the same was confirmed by him in his statement recorded u/s 132(4) of the Act. The AO observed that the appellant has failed to point out the duplication of the amount of Rs. 12.41 Lakhs determined from the seized documents at Annexure A-1, Page 1 & 2 with the pocket diaries at AS Exhibit-4, 5 & 6 as contended by the appellant. Further it was observed that such duplication was neither pointed out during the search proceedings and in the statement recorded u/s 132(4) and also in the Affidavit dt. 30.07.2012. The AO further observed that both Annexure A-1 & Annexure AS separate and unrelated documents which have been separately seized and therefore there was no correlation between the two and the appellant himself failed to point out the alleged correlation. Further during the assessment proceedings, the appellant filed an affidavit dt. 13.09.2017 wherein he requested that the entire undisclosed income detected during the search may be considered in his hands only. Similarly an affidavit was also filed by Sh. R.K. Kandoi on 13.09.2017 stating that any addition pertaining to Rs. 12.41 Lakhs may only be made in the hands of the appellant. Sh. Manglalkandoi. The AO observed that the appellant has himself admitted that the amount noted in the seized

documents are related to advances given by him out of his undisclosed income. In view of the above facts, the AO held that the appellant on his own has accepted the facts related to his undisclosed income without any force, pressure or coercion. Aggrieved by the aforesaid addition, the appellant filed appeal before the Ld. CIT(A)-4, Jaipur which was disposed off vide order dt. 01.11.2018 wherein addition of Rs 6,00,000/- on account of undisclosed advances made by the appellant was confirmed by the Ld. CIT(A). Accordingly, after issuing show cause notice in this regard, the AO imposed a penalty of Rs. 1,85,400/- u/s 27111)(c) of the Act.

(ii) Before me, the Ld. AR of the appellant contended that the aforesaid documents does not relate to him but relates to one Sh. Subhashdi who has remained unexamined by the Department. It was further contended that the AO has made the addition of Rs. 6,00,000/- in the hands of the appellant in view of the affidavit filed by him on 13.09.2017 wherein it has been stated that the additions, if any, in respect of this matter may be made in the hands of the appellant. It was contended that it is a settled position of law that what is otherwise not taxable cannot become taxable because of the admission of the assessee. It was further contended that there is no evidence of credible documents on the basis of which it can be said that the assessee has concealed the income.

(iii) I have considered the arguments of the Ld. AR. It is observed that the appellant himself has made the admission during the course of search proceedings in his statement recorded u/s 132(4) as well as by filing an affidavit subsequently on 30.07.2012 wherein he has accepted that the amounts noted in the seized documents are related to advances given by him out of his undisclosed income. The aforesaid amount of Rs. 6,00,000/-, being undisclosed advances, were not only added by the AO in the assessment order but was also confirmed by Ld. CITA). It is observed that on further appeal, the Hon'ble ITAT vide their order in ITA No. 1309/JP/2018 dated 07.09.2020 has also confirmed the aforesaid addition in the current year but has given the set off of this addition in Assessment Year 2011-12 by holding that this amount was available with the appellant for making advance in subsequent years. These findings are given in para 67 on page no. 75 of the order of the Hon'ble ITAT wherein the Hon'ble ITAT has allowed the set off in assessment year 2011-12. Thus, the fact remains that an addition of Rs.6,00,000/- was made by the AO on account of undisclosed advances which has been confirmed by the Ld. CIT(A). This addition has been further confirmed by the Hon'ble ITAT which implies that the appellant failed to explain the snare of undisclosed advances of Rs. 6,00,000/- Thus the case of the appellant is squarely covered under the provisions of sec. 27(1)(c) of the Act.

(iv) It is in this background when the appellant himself admitted the undisclosed income, that this amount was added by the AO in the quantum proceedings as undisclosed advances which was confirmed by the Ld. CIT(A) and subsequently by the Hon'ble ITAT, Jaipur Bench, Jaipur, that the penalty u/s 271(1) of the act was levied

(v) In this respect, it is also worthwhile to mention here that the above discrepancy in respect of which addition has been made was detected only during the course of search proceedings, which otherwise would have escaped assessment and this amounts to concealment of income. From all the above facts observed in the case of the appellant, it is quite apparent that the appellant had concealed the particulars of income for which he also had no valid explanation to offer

(vi) Therefore in the facts of the case, Explanation 1 of section 271(1) of the Act is clearly attracted, where in the explanation offered by the appellant has not been substantiated and appellant has failed to prove that such explanation is bonafide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him in the return of income so filed.

(vii) Further, as regards to the contention of the appellant that the addition finally sustained by the Hon'ble ITAT is based on acceptance by the assessee to purchase peace of mind and avoid prolonged litigations, it is mentioned that the Hon'ble Supreme Court in its decision dated 30.10.2013 in Civil appeal No. 9772 of 2013 in the case of MAK Data P. Ltd. V. CIT-II (2013) 38 taxmann.com 448 (SC) have held as under:

1) Explanation to section 271(1) raises a presumption of concealment, when a difference is noticed by the Assessing Officer, between reported and assessed income. The burden then shifts on the assessee to show otherwise, by cogent and reliable evidence;

2) When the initial onus placed by the Explanation, has been discharged by assessee, the onus shifts on the revenue to show that the amount in question constituted the income and not otherwise;

3) The Assessing Officer shall not be carried away by the plea of the assessee like 'voluntary disclosure, buy peace', 'avoid litigation', 'amicable settlement', etc., to explain its conduct;

4) Assessee had only stated that he had surrendered the additional sum with a view to avoid litigation, buy peace and to

channelize the energy and resources towards productive work and to make amicable settlement with the income tax department. Statute does not recognize those types of defences under the Explanation 1 to section 271/1ek

5 It is trite law that the voluntary disclosure does not free the assessee from the mischief of penal proceedings under section 271(1)(c). The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he has to be absolved from penalty:

6) The surrender of income in this case was not voluntary in the sense that the offer of surrender was made in view of detection made by the Assessing Officer in the search conducted in the sister concern of the assessee;

7) The Assessing Officer had to satisfy whether the penalty proceedings were initiated or not during the course of the assessment proceedings and the Assessing Officer was not required to record his satisfaction in a particular manner or reduce it into writing. Thus, there was no illegality in action of department in initiating penalty proceedings.

Accordingly, the contentions of voluntary surrender to buy peace and avoid litigation etc cannot be considered as defence for non-levy of penalty under section 271(1)(c) of the Act.

(viii) In the above case, the Hon'ble Supreme Court held that AC shall not be carried away by plea of assessee like voluntary disclosure, buy peace, avoid litigation, etc. to explain its conduct. Explanation to Section 271(1)(c) raises presumption of concealment when difference is noticed by AO between reported and assessed income. Initial burden is on assessee to show cogent and reliable evidence. Voluntary disclosure does not release assessee from mischief of penal proceedings. Further, surrender of income was found to be non-voluntary as it was made after detection in search conducted in sister concern. Survey was conducted more than 10 months before assessee filed return. Had it been intention of assessee to make full and true disclosure it would have filed return declaring income inclusive of amount which was surrendered later. Accordingly, initiation of penalty proceedings was confirmed by the Supreme Court.

(ix) Therefore, in view of the above facts, it is absolutely clear that the appellant has not substantiated his claim with cogent evidences and that the appellant has failed to prove that such explanation is bonafide and that all the facts relating to the same and material to the

computation of his total income have been disclosed by him in the return of income so filed.

(x) The surrender of income in this case was not voluntary in the sense that the offer of surrender was made in view of detection made by the investigation Team during the course of search proceedings. In the present facts and circumstances of the case, the appellant has not been able to substantiate the explanation that was offered by him. Further the appellant during the course of search proceedings and subsequently vide his affidavit has himself agreed to consider the undisclosed advances in his hands. Under such facts and circumstances of the case penalty u/s 271(1)(c) is clearly attracted. Accordingly the contentions of voluntary surrender to buy peace and avoid litigation etc cannot be considered as defence for non levy of penalty under section 271(1) of the Act.

(xi) In the case of RakeshSuri 41 DTR ARR 175 it has been held that surrender made after the concealed income was detected by the Department cannot be held to be voluntary or bonafide but under compulsion, and in that case, the assessee cannot be Absolved from levying penalty because he agreed to the addition at the time of assessment. By offering the income in assessment proceedings, it is clear that the assessee himself admits that the same was taxable income.

(xii) In view of the facts and circumstances of the case and discussion here in above, the contentions and submissions of the appellant are not found to be acceptable and therefore they are rejected and the penalty of Rs. 1,85,400/- imposed by the AO u/s 271(1)(c) is confirmed. Accordingly, the Ground of Appeal No. 4 is treated as dismissed.

11. As the assessee not finding favour with the order of the Id. CIT(A), has filed an appeal before this tribunal. In this appellant proceeding the Id. AR of the assessee submitted following written submission to support the various grounds raised before us. The written submission filed by the assessee is reiterated here in below:

Ground No. 1 to 4:-

1. In the facts and circumstances of the case the learned CIT(A) has erred in confirming the action of the Learned AO in imposing the penalty u/s 271(1)(c) of the Income Tax Act, 1961.
2. In the facts and circumstances of the case the learned CIT(A) has erred in confirming the action of the Learned AO in passing the order under section 271(1)(c) of the Income Tax Act, 1961 without striking off the irrelevant portion of the printed show cause notice dated 15.09.2017 viz., furnished inaccurate particulars of income or concealed particulars of such income is bad in law.
3. In the facts and circumstances of the case the learned CIT(A) has erred in confirming the action of the Learned AO in passing the order under Section 271(1)(c) of the Act is against the principles of judicial consistency and therefore, bad in law.
4. In the facts and circumstances of the case the learned CIT(A) has erred in confirming the action of the Learned AO in passing the order u/s 271(1)(c) of the Income Tax Act, 1961 is void ab-initio deserves to be quashed as no satisfaction was recorded with reference to concealment of income or furnishing inaccurate particulars of income.

NOT PRESSED.

Ground No. 5 :-

In the facts and circumstances of the case the learned CIT(A) has erred in confirming the action of the Learned AO in imposing the penalty of Rs. 1,85,400/- u/s 271(1)(c) of the Income Tax Act, 1961.

1. Addition of Rs. 6,00,000/- is on the basis of annexure A-1 and no further enquiry was made –

The addition of Rs. 6,00,000/- has been made by the Learned Assessing Officer with reference to annexure 'A-1' page 2 which is scanned below: -

शुद्ध GA  
 1-50 23-9-09  
 3-00 - "  
 -50 2-7-09  
 1-00 28-7-09  
 Mr Singhal  
 18.7.12

(2)

The above page very apparently discloses the following: -

- (i) It relates to one Shri Subhash Ji who has remained unexamined by the department. Without examining Shri Subhash Ji the truth cannot be known.
- (ii) It has no signatures of the assessee as such it cannot be considered in the hands of the assessee nor there is signature of Mr Subhash Ji.
- (iii) It does not contain the name of the assessee as such there was no ground with the Learned Assessing Officer to consider the same in the hands of the assessee.

Further the assessee was examined with respect to this page. The relevant question answer is no. 25.



The position of law being so no addition could have been made in the hands of the assessee. But since the assessee has accepted, therefore the addition was made in his hand and finally sustained.

The learned AO has initiated the penalty u/s 271(1)(c) in the assessment order by mentioning that "the assessee has concealed the income". But there is no evidence or credible documents on the basis of which it can be said that the assessee has concealed the income. Here it is a question whether only by accepting something the assessee has agreed to pay tax for some other reasons. Then no liability for penalty can be fastened to the assessee. Therefore no penalty is leviable without bringing any credible and positive evidences on record against the assessee to prove that the assessee has actually concealed the particulars of his income. In the instant case there is only acceptance of the assessee and nothing more was brought on record to prove the concealment.

Therefore the addition finally sustained by the ITAT is based on acceptance by the assessee for levy of taxes to purchase peace of mind and avoid prolonged litigations and no any positive material or credible evidence was brought on record to substantiate that the assessee has concealed the income. It is settled principle of law that penalty cannot be imposed where the additions have been made only on the basis of confession u/s 132(4) of the IT Act.

It is submitted that it is a case where addition was made purely on assessee's confession during search. There is no material on record either at the time of assessment proceedings or at the time of penalty proceedings which may establish any gross or willful negligence on the part of the assessee. No any particular or specific defect was pointed out by the Learned Assessing Officer. There is no positive evidence with regard to the concealment of income has been given in the order. Therefore the finding of the Learned Assessing Officer is purely on assumption and presumptions and only the statement of the assessee was reproduced in assessment order while making the addition by the learned AO. It shows there is nothing with the department except the statement of the assessee and annexure A-1 which is a details of loans taken by the assessee and not for the loan given by the assessee. Therefore no penalty is leviable on such additions made by the Learned Assessing Officer.

2. Scheme of the previous counsel: -

It is further submitted that the disclosures of income on the basis of annexure A-1 page no. 3, 4, 5 was part of the scheme of the counsel engaged by the assessee for purposes of appearance before the Settlement Commission. Actually the annexure A-1 page no. 3, 4, & 5

contains the details of receipt of loan which the assessee has taken from the various parties in cash for his business requirements. But due to technical difficulties these unsecured loans taken by the assessee has been shown as loan given by the assessee. Actually these are not income or assets of the assessee but these are the liabilities of the assessee on which the assessee has paid taxes to over come with the technical and legal difficulties and purchase peace of mind and avoid unnecessary prolonged litigation. The counsel has been changed as the assessee did not find favour with the scheme of the counsel. The previous counsel had also wrongly pleaded before the Settlement Commission regarding the other papers that these indicated loans advanced by the assessee whereas these are the loan taken by the assessee. The position being so it is submitted that assessee may not be punished for the wrong doing of the counsel because he has already paid the taxes and penalty should not be levied in such circumstances.

The observations of the Learned Assessing Officer are totally uncalled, unjust and irrelevant. The addition is totally on estimate basis and has been made in lump sum manner. The penalty has been levied only with reference to the statement of the assessee. No independent enquiries have been made while levying the penalty nor any such material has been brought on record which establishes that assessee concealed any income. The submission of the assessee is that the penalty has been levied with respect to an addition which has been made purely on guess work and conjectures and surmises.

The learned AO has initiated the penalty u/s 271(1)(c) in the assessment order by mentioning that "the assessee has concealed the income". But there is no evidence or credible documents on the basis of which it can be said that the assessee has concealed the income. Therefore no penalty is leviable without bringing any evidence on record.

3. Penalty should not have been imposed as the additions made in the quantum proceedings –

It is submitted that the penalty should not have been imposed as they are entirely based on the additions made in the quantum proceedings. Simply because additions have been sustained it was argued does not automatically lead to the levy of penalty. Addressing the basis of the additions it was stated that these are based on rough notings on loose papers and cannot be held as evidence leading to the conclusion that these were suppressed income of the assessee. Apart from the reason that the addition was sustained in the quantum, the AO has made no effort or enquiry to justify levying of penalty. No reasoning has been

given by him to justify the penalty and it has been levied in a mechanical manner. It was argued that since there was no specific finding for levy of penalty in the quantum proceedings in the penalty order no penalty should have been levied. It was also argued that penalty proceedings and assessment proceedings are separate and distinct and simply because the addition has been made penalty cannot be imposed. Reliance was placed upon the following judgments:-

- (i) CIT vs Jalaram Oil Mills (2001) 171 CTR (GUJ) 426
- (ii) Vishwakarma Industries vs CIT (1982) 29 CTR (P&H) 243 (FB) 135 ITR 652 (P&H): TC 50R 98,.
- (iii) CIT vs Ravail Sincjh & Co. (2002) 173 CTR (P&H) 429.
- (iv) Laxmi Platers vs ACIT ITAT, Ahmedabad 'B' Third Member Bench (2001 73 TTJ (Ahd) 171.
- (v) CIT vs Bengal Galvanising Works (1987) 165 ITR 249 (Cal)
- (vi) Hindustan Steel Ltd. vs State of Orissa (1972) 83 ITR 26 (SC)

4. Other favourable case laws –

- (i) National Textiles vs CIT 249 ITR 125 (Guj.)  
It is not enough for the purpose of penalty that the amount in question has been assessed as income
- (ii) S.P.Goel vs DCIT 82 ITD 85 (Bom)  
Mere entry on a loose sheet of paper does not indicate undisclosed income unless circumstantial evidence in the form of extra cash, jewellery or investment outside books is found.
- (iii) Ashwini Kumar vs ITO 39 ITD 183 (Del)  
In the case of dumb document, revenue should collect necessary evidence that the figures represent incomes earned by the assessee.
- (iv) JCIT vs West Bengal Trading Agency, IT(SS) NO.49(Cal) of 2001  
There has to be direct or circumstantial material to establish that the intention expressed in the seized document/books has actually been implemented (vide para 8).
- (v) P.R.Patel v. Dy.CIT 78 ITD 51 (TBOM)  
No addition can be made on the basis of a seized documents which do not bear the name of assessee.

5. Finding the of learned CIT(A) –

It is submitted that the learned CIT(A) has confirmed the penalty imposed by the Learned AO on the basis of that in the quantum proceedings the Hon'ble ITAT sustained the addition on account of income surrendered by the assessee during the course of search. The learned CIT(A) has also mentioned on page 13 of the appellate order that the surrender of income was not voluntary and the income was offered by affidavit agreed to consider in the hands of the assessee. The Learned CIT(A) further relied upon certain case laws. In this regard our submission is that –

- (i) The paper on the basis of which addition has been made is totally a dump paper.
- (ii) In the statement recorded u/s 132(4), the assessee stated that the amount required to be considered in the hands of Shri Anand Singhal but for no reason later on an affidavit is furnished and the assessee has agreed to pay tax on the entries which were not related to him for the family dispute reasons.
- (iii) That no enquiry was made and no any material was brought on record to substantiate or prove that the income accepted by the assessee was his concealed income. There may be hundred other reasons for acceptance of payment of tax.
- (iv) Since the entire addition was based on confessional statement. Such statements are directly in violation of board circular. Therefore, on such addition penalty u/s 271(1)(c) cannot be levied.
- (v) The documents have no dates and it cannot be considered in any period unless it is linked with the affairs of the assessee.
- (vi) It has no narration so as to indicate that it pertains to the business/personal affairs of the assessee.
- (vii) Name of the assessee is not available as such it could not be considered in his hand.
- (viii) Signature of the assessee are not available on this page nor it was not in his hand writing.

Therefore, it is clear that the surrender was made to buy the mental peace and avoid further litigation. The due taxes have also been deposited by the assessee. The assessee has also quoted many laws of Hon'ble Courts and Apex Court of the country which is favorable to the assessee. But the Learned CIT(A) has not considered the same. It is settled position of law that the law that quantum and penalty proceedings stand on different footing and each and every disallowance/addition in the former does not ipso facto attract the latter penal provision. The Learned CIT(A) has not given any new finding. He has just repeated the plea taken by the Learned AO which has been

controverted by the assessee before the Learned CIT(A). Merely because the assessee has surrendered an amount, which was seized from him after initial explanation, that it belonged to his son/relative, penalty cannot be avoided, since the initial explanation was prima facie unbelievable, so that the surrender of such income can only be treated as involuntary. In view of the Explanation deeming concealment, the assessee has a duty to offer an explanation. But where an explanation was offered and found to be unreliable, penalty becomes exigible. [CIT v Mohd. Mohtram Farooqui (2003) 259 ITR 132 (Raj)].

Therefore, your honour is requested to delete the penalty imposed by the learned AO and confirmed by the Learned CIT(A).

Ground No. 6 –

The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.

Not pressed.

Your Honor is requested to decide the appeal in favour of the assessee by considering the above submission and oblige.”

12. The Id. AR also drawn our attention to the notice of penalty issued by the Id. AO where in he has not strike off the limb of section 271(1)(c) to levy the penalty and thereby the order of levying the penalty is against the principles of natural justice. However, at the time of hearing the Id. AR of the assessee has not pressed this technical ground raised ground no. 1 to 4 and he had decided to argue the appeal on merits of the case.

In addition to the above written submission Id. AR appearing on behalf of the assessee submitted that the settlement application

was rejected merely on the ground that assessee could not make any sound basis for explaining the manner of earning such undisclosed income and working out such income. Thus, it may please be appreciated that the addition confirmed in this on account of the figure of the loan given for an amount of Rs. 6,00,000/- recorded in the seized material without any head or tail and it is also not sure that whether amount given or taken. It is merely dump document and has not relation with the business of the assessee. The AO has not further examined this issue and not placed on record any document or evidence. The penalty cannot be levied on the amount of loan taken on which the assessee did not own any assets and accepted the addition to buy the peace with the department. The Id. AO has not made any enquiry to confirm the fact that whether assessee has given the loan or taken the loan. Thus, on this fact the addition sustained there is no element of income and thus the levy of penalty is not sustainable. The Id. AR of the assessee has drawn our attention to page 2 of the penalty order where in the Id. AO extracted the question no. 25 the same is reproduced for the convenience to have the brevity of the facts.

प्रश्न-25 मैं आपको Annexure A-1 का पृष्ठ संख्या 1,2 दिखा रहा हूँ जो कि D-91 अम्बाबाड़ी से seize हुआ इन्हें देख कर बताएं कि इन प्रविष्टियों के बारे में आप क्या जानते हैं?

उत्तर मैंने उपरोक्त दोनों पृष्ठ देख लिए हैं, श्री आनन्द सिंघल जो कि यहां उपस्थित हैं उन्होंने बताया कि ये दोनों पेज इनके हस्तलेख में हैं पृष्ठ 1 पर 1,91,200/- रूपये की प्राप्ति एवं पृष्ठ एक के पीछे 2 पर 4,50,000/- रूपये Loan दिये हुए तथा पृष्ठ 2 पर 6,00,000/- के दिये हुए Loan लिखे हुए हैं। जो कि उनकी लेखा पुस्तिकाओं में कहीं पर भी दर्ज नहीं हैं उपरोक्त प्राप्ति एवं दिये गये Loan जो कि 1,91,200/-, 4,50,000/-, 600000/-= 12,41,000/- हैं ये श्री आनन्द सिंघल की सम्बन्धित निर्धारण की अघोषित आय है जिस पर वह देय कर देने को तैयार हैं। इस कथन के समर्थन में इस पेज पर हस्ताक्षर करने को तैयार है।

The Id. AR of the assessee further submitted that there is no assets found during the search or income which suggest the undisclosed income to that extent. No enquiry is conducted by the assessing officer. Department has chosen to remain silent to the reply of the assessee that the paper is related to Shri Anand Singhal. Not only that the name written in this document that person is also not examined. The Id. AR of the assessee relying on the various judgement cited in his written submission submitted that when there is no income which is corroborated with the relevant asset found in the search proceeding merely the assessee has surrendered the amount the levy of the penalty is not justified. He has further submitted that the decision relied upon by Id. CIT(A) all

are on different facts and therefore, the facts of the case relied upon and the facts of the assessee's case are different the ratio of the decision relied upon are not applicable in the present case. The revenue has not controverted that the fact that this paper is belonging to the assessee and not of Shri Anand Singhal as claimed by the assessee. The Id. AR of the assessee further submitted that the department has also not proved that the amount recorded in the dump document is the loan given or taken and in both the situation the other party is not referred or examined so far by the revenue and thus this unilateral transaction and that too is not related to assessee cannot be considered the concealment of income for levy of penalty.

13. The Id. DR is heard who has relied on the findings of the lower authorities and vehemently argued that the assessee has not shown the income in the return of income filed which is supported by seized document. The Hon'ble ITAT has confirmed the addition after hearing the merits of the assessee's case and thus the levy of the penalty on the sustained addition is automatic and it falls under the meaning of the concealed income and the information is

unearthed during the searched proceedings and if no search is conducted this income remained undisclosed. Thus, he has supported the findings of the Id. CIT(A). The Id. DR further relied on the judgement of Sundarm Finance Limited 99 Taxmann.com 152 (SC) where in the apex court has held that even the claim of depreciation wrongly claimed is subject to levy of penalty u/s. 271(1)(c) of the Act. The Id. DR further drawn our attention to the findings of the Id. CIT(A) recorded in the para 5.2(vii) at page 11 where in the relying the apex court decision he submitted that the explanation to section 271(1) raises a presumption of concealment, when a difference is noticed by the assessing officer, between reported and assessed income. The burden then shifts on the assessee to show otherwise, by cogent and reliable evidence. He further submitted that the assessing officer shall not carried away by the plea of the assessee like voluntary disclosure, buy peace, avoid litigation, amicable settlement etc., to explain their conduct.

14. We have considered the rival contentions, perused the material available on record and also gone through the findings of the lower authorities recorded in their respective orders. We have

also gone through the various judicial ruling placed before us by both the parties to drive home to their contentions. The Id. AR of the assessee has not pressed the ground no. 1 to 4 therefore, the same stands dismissed. The bench noted that ground no. 5 raised by the assessee is related to levy of the penalty on merits of the case not sustainable.

15. As regards the ground raised on merit no 5 it is evident that the Id. CIT(A) has sustained the penalty u/s. 271(1)(c) on addition sustained for an amount of Rs. 6,00,000/- being the amount of alleged undisclosed advances given to Mr. Subhas ji. This addition is confirmed by the ITAT in the current year but given the set off of this addition in Assessment Year 2011-12 by holding that this amount was available with the advance made in the subsequent year. Thus, in the year under consideration sustained addition is of Rs.6,00,000/- on account of the alleged loan given which is in fact sustained in the hands of the assessee in view of an affidavit filed by the assessee on 13.09.2017 stating that the addition if any are required in respect of this matter the same may be made in the hands of the assessee.

16. Therefore, the Id. AR of the assessee as regarding the addition made on account of undisclosed advances submitted that the advance is related to Shri Anand Singhal and Shri Subhaji, it has not relation with the assessee it did not contain name of the assessee. The papers could not be linked with the business of the assessee. Further these papers do not have the signature of the assessee. In view of this it not correct on the part of the Learned Assessing Officer to make any addition with reference to these papers and even if made the same made it is not liable for any penalty as it not undisclosed income of the assessee or concealed income of the assessee. The aforesaid facts established that these page is rough, dump and related to the assessee. Thus, based on that facts on record no addition is warranted on the basis of the said seized paper. But the assessee agreed to pay tax to avoid prolonged litigation and purchase peace of mind before the settlement commission. Therefore, on such addition penalty cannot be imposed where the transactions are not related to the assessee and there is no positive evidences that the entries recorded in seized paper is undisclosed income of the assessee. The Id. DR appearing on the behalf of the revenue did not controvert the

arguments of the Id. AR of the assessee related to the fact recorded in question no. 25 of the statement record and the fact that who is Subhas ji and whether any investigation conducted to find the truth regarding the fact that the loan is given or taken but merely stated the income is confessed as his own income. On the other hand the Id. AR of the assessee submitted that the seized paper based upon with the addition is made it related to one Shri Subhas Ji who has remained unexamined by the department. Without examining Shri Subhasji the truth cannot be known. It has not signature of the assessee nor there is signature of Mr. Subhas Ji. It does not contain the name of the assessee as such there was no ground with the Id. AO to consider the same in the hands of the assessee. Further the assessee was examined related this page in the statement recorded at question no. 25 that related facts is not disputed or there is no whisper in the orders of the lower authorities. In the said question no. 25 the name of Shri Anand Singhal was submitted but no further facts is placed on record by the revenue. Further the Id. AR submitted that Id. AO has made the addition of Rs. 6 lac in the hands of the assessee in view of an affidavit in respect of this matter filed by the assessee on

13.09.2017 stating that the addition if any are required to be made the same may be made in the hands of the assessee. However, the Id. AO could not be ignorant of the position of law.

17. Both the Id.AO and for that matter assessee cannot change the position of law by mutually agreeing on some issues and this position will not lead to a concealment of Income. It is settled position of law that what is otherwise not taxable cannot become taxable because of admission of the assessee nor can there be any waiver of the right otherwise available to the assessee in law. The chargeability of income not dependent on the admission of or waiver by the assessee. Chargeability is dependent on the charging section of the Act which needs to strictly constructed as decided by the Calcutta high court in the case of CIT Vs. Bhaskar Mittar 262 ITR 638 (Kol). Thus, in the present case not addition could have been made in the hands of the assessee. But assessee has accepted therefore, the same is sustained. Thus, the basic condition to have the income is not evidently or credible proved by the revenue with cogent material which prove that the said income is really the income of the assessee merely admission without any

cogent material the same cannot be termed as concealed income lead to penalty u/s. 271(1)(c) of the Act. Both the statement relied upon by the revenue was recorded under duress and pressure, otherwise the entry is not linked with the affairs of the assessee.

18. The Id. AR Vehemently argued that the Learned Assessing Officer has not made any post search enquiries so as to link the entry with the business of the assessee. No effort was made even to examine the person who had taken the loan from the assessee nor any action considered in his hands this parties were initiated; all these suggest that the revenue is taking the benefit of the voluntary surrender made by the assessee and Id. AO acted having one sided approach. The relied upon paper has no narration so as to indicate that it pertains to the business / affairs of the assessee. Name of the assessee is not available as such it could not be considered in his hands. Signature of the assessee are not available on this page as such it does not pertain to the assessee. Based on this findings even the addition made and sustained cannot lead to levy of penalty because the papers relied upon are merely the loose paper itself has not leg to stand and it cannot be

considered as undisclosed income of the assessee as the revenue did not match with the source and particular assets based upon which this can be considered as income/assets, as revenue has not taken any action against that person which suggest that the advance cannot be termed as an undisclosed income earned from undisclosed sources and thereby lead to levy of penalty for concealment of income. Not only that in the statement u/s. 132(4) it was brought on record that these papers pertain to Shri Anand Singhal and were admittedly in his handwriting and as such deserves to be considered in his hands. The main thrust of argument of the assessee was that the paper on the basis of which addition was made did not pertain to the assessee. Hence there was no occasion for making addition in the hands of the assessee but was confirmed only based on the affidavit voluntary surrendering. The assessee had further pleaded that the addition was made by the Learned Assessing Officer in the hands of the assessee despite the fact that in statement u/s **132(4) it was brought on record that these papers pertain to Shri Anand Singhal and were admittedly in his handwriting and as such deserved to be considered in his hands.** The Learned CIT(A)

has not at all considered the submissions of the assessee. The additions have been confirmed by the Learned CIT(A) observing that " the appellant himself has made the admission during the course of search proceedings in his statement recorded u/s 132(4) as well as by filing an affidavit subsequently on 30.07.2012 wherein he has accepted that the amounts noted in the seized documents are related to advances given by him out of his undisclosed income. The aforesaid amount of Rs. 6,00,000/-, being undisclosed advances, were not only added by the AO in the assessment order but was also confirmed by Ld. CITA). It is observed that on further appeal, the Hon'ble ITAT vide their order in ITA No. 1309/JP/2018 dated 07.09.2020 has also confirmed the aforesaid addition in the current year but has given the set off of this addition in Assessment Year 2011-12 by holding that this amount was available with the appellant for making advance in subsequent years. These findings are given in para 67 on page no. 75 of the order of the Hon'ble ITAT wherein the Hon'ble ITAT has allowed the set off in assessment year 2011-12. Thus, the fact remains that an addition of Rs.6,00,000/- was made by the AO on account of undisclosed advances which has been confirmed by the Ld. CIT(A). This

addition has been further confirmed by the Hon'ble ITAT which implies that the appellant failed to explain the snare of undisclosed advances of Rs. 6,00,000/- Thus the case of the appellant is squarely covered under the provisions of sec. 27(1)(c) of the Act.”

19. Moreover, additions on account of advances to person found noted here and there on various papers deserved to be segregated and peak amount required to be added. No such exercise was done by the Learned Assessing Officer nor an opportunity was allowed to the assessee for working out the same. It is settled principle of law that in such cases where the capital revolves many times in a year in giving advances time and again additions required to be made only on capital amount and not on multifold revolving of the same. A capital may revolve four to five times in a year in giving advances and receiving then back and giving the same again and again. In such circumstances it is the one time capital that requires to be considered and not the total of all the transactions. These papers are the deaf and dumb papers and when there is undisclosed income not supported by any asset no penalty can be levied on such additions. The penalty proceeding

are separate proceeding and the findings given in the assessment proceeding may not always be correct in the penalty proceeding and this proceeding all the aspect is required to be seen as the penalty proceedings are quasi criminal proceedings and the ultimate finding of assessment is required to be tested in the ultimate aim of levy of penalty. On conjoint reading of the provision of law for levy of penalty and the definition of undisclosed income and the facts as narrated here in above that Id.AO has not proved that whether the advance in question are in fact taken or given by the assessee or Mr. Anand Singhal. Not only that the revenue has not done any exercise to confirm with Shri Subhas Ji that whether the money in question is related to the person named in or not? Since, the assets being the advances itself is not tested and statement recorded at the time search where in the assessee has categorically submitted that the money in fact taken and not given and the same is not pertain to the assessee. In the assessment proceeding this very basic fact is not establish and in the absence of this fact being not confirmed we are of the considered view that in light of these facts being not clear the levy of the penalty under

section 271(1)(c) is not justified on the addition of Rs. 6,00,000/- and therefore, the same is required to be deleted.

20. The Id. CIT(A) in para 5.2(xi) relying on Rakesh Suri case 41 DTR APR 175 concluded that surrender made after the concealed income was detected by the department cannot be held to be voluntary or bonafide but under compulsion, and in that case, the assessee cannot be absolved from levying penalty because he agreed to the addition at the time of assessment. On the contrary submitted that the surrender was not voluntary and the facts placed on record is not investigated by the revenue. So, when an explanation was offered and found to be unreliable, penalty becomes exigible [ CIT Vs. Mohd. Mohtram Farroqui -2003 259 ITR 132(Raj) ]. In addition the Id. AR of the assessee he has relied upon the various decision cited and relevant important finding of the court i.e. in case of National Textiles vs CIT 249 ITR 125 (Guj.) "It is not enough for the purpose of penalty that the amount in question has been assessed as income", in the case of S.P.Goel vs DCIT 82 ITD 85 (Bom) "Mere entry on a loose sheet of paper does not indicate undisclosed income unless circumstantial

evidence in the form of extra cash, jewellery or investment outside books is found”, in the case of Ashwini Kumar vs ITO 39 ITD 183 (Del) “ In the case of dumb document, revenue should collect necessary evidence that the figures represent incomes earned by the assessee.” In the case of JCIT vs West Bengal Trading Agency, IT(SS) NO.49(Cal) of 2001 “There has to be direct or circumstantial material to establish that the intention expressed in the seized document/books has actually been implemented (vide para 8), and in the case of P.R.Patel v. Dy.CIT 78 ITD 51 (TBOM) “No addition can be made on the basis of a seized documents which do not bear the name of assessee.” Based on judicial precedent and the detailed discussion made here in above the penalty levied on the sustained addition of Rs. 6,00,000/- is deleted and in terms of these observations ground no. 5 raised by the assessee is allowed.

21. In the result, the appeals of the assessee in ITA No. 319/JPR/2022 is allowed.

22. The fact of the case in ITA No. 319/JPR/2022 is similar to the case in ITA No. 320 & 321/JPR/2022 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 319/JPR/2022 is equally similar on set of facts and grounds ITA No. 320 & 321/JPR/2022. Therefore, it is not imperative to repeat the facts and various grounds raised by assessee. Hence, the bench feels that the decision taken by us in ITA No. 319/JPR/2022 for the Assessment Year 2010-11 shall apply mutatis mutandis in the ITA No. 320 & 321/JPR/2022. In the results appeal of the assessee in ITA no. 319 to 321/JPR/2022 stands allowed.

In the results the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 13/10/2022.

Sd/-

( राठोड कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 13/10/2022.

\*Ganesh Kumar/Santosh

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

1. अपीलार्थी / The Appellant- Shri Mangi Lal Kandoi, Jaipur.

2. प्रत्यर्थी / The Respondent- ACIT, Central Circle-2, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 319, 320 & 321/JP/2022 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar