आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL, RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

Sl. No.	ITA/CO No.	Name of Appellant	Name of Respondent	Asst. Year
1.	152/RPR/2014	The Deputy Commissioner of Income Tax, Circle-1(1), Bilaspur	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	2009-10
2.	156/RPR/2014	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	The Deputy Commissioner of Income Tax, Circle-1(1), Bilaspur	2009-10
3-4.	39/RPR/2023 40/RPR/2023	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	The Deputy Commissioner of Income Tax, Circle-1(1), Bilaspur	2013-14 2014-15
5-6.	41/RPR/2023 42/RPR/2023	South Eastern Coalfields Ltd., Seepat Road, Sarkanda, Bilaspur (C.G.) PAN: AADCS2066E	The Assistant Commissioner of Income Tax, Circle-1(1), Bilaspur	2015-16 2016-17
7.	97/RPR/2017	The Deputy Commissioner of Income Tax, Circle-1(1), Bilaspur	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	2011-12

8.	143/RPR/2017	The Deputy Commissioner of Income Tax, Circle-1(1), Bilaspur	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	2010-11
9.	144/RPR/2017	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	The Deputy Commissioner of Income Tax, Circle-1(1), Bilaspur	2011-12
10.	163/RPR/2017	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	The Deputy Commissioner of Income Tax, Circle-1(1), Bilaspur	2010-11
11.	167/RPR/2018	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	The Deputy Commissioner of Income Tax, Circle-1(1), Bilaspur	2012-13
12.	170/RPR/2018	The Assistant Commissioner of Income Tax, Circle-1(1), Bilaspur	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	2012-13
13.	66/RPR/2021	South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.) PAN: AADCS2066E	Jt. Commissioner of Income Tax (OSD), Circle-1(1), Bilaspur	2010-11

Assessee by : S/Shri Ajit Korde, Advocate a/w Ankit Agrawal, CAs

Revenue by : Shri V.K Singh, CIT-DR

सुनवाई की तारीख / Date of Hearing : 26.04.2023
घोषणा की तारीख / Date of Pronouncement : 09.06.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The captioned cross-appeals filed by the assessee and revenue are directed against the respective orders passed by the CIT(Appeals), which in turn arises from the orders passed by the A.O u/s.271(1)(c) of the Income Tax, Act, 1961 (for short 'the Act') for the respective assessment years. As the issues involved in the present appeals are inextricably interlinked; or in fact interwoven, therefore, the same are being taken up and disposed off by way of a consolidated order. We shall first take up the cross-appeals filed by the assessee and the revenue in ITA No.152/RPR/2014 and ITA No.156/RPR/2014 for A.Y. 2009-10, respectively, as the lead matter, and the order therein passed shall on the first principle adjudicated by us shall apply *mutatis mutandis* for disposing off the other appeals. The assessee has assailed the impugned order passed by the CIT(A) in ITA No.156/RPR/2014 on the following grounds before us:-

ITA No.156/RPR/2014

"1(a). That on facts and in the circumstances of the case the Learned Commissioner of Income Tax (Appeals) ["Ld. CIT(Appeals)"] erred in confirming the 100% penalty under section 271(1)(c) of the Act levied by the Learned Assessing Officer ("Ld. AO") vide its order dated 19 February 2013 on account of additions of Rs.6,193.10 lakhs and Rs 11,385.80 lakhs under the head "Land Compensation and Rehabilitation expenses" and Provision for leave encashment".

1(b) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in not discharging the onus of justifying that inaccurate particulars of income was furnished and the 'explanation' given by the Appellant is not 'bona fide' and thereby tax is sought to be evaded in the instant case.

1(c). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have failed to appreciate that the Ld. AO has not recorded any factual finding of falsity or bogus claims w.r.t. "Land Compensation and Rehabilitation expenses" and "Provision for leave encashment", in absence of which, no penalty can be sustained.

2(a) That on the facts and in the circumstances of the case and without appreciating the fact that the claim of "Land Compensation and Rehabilitation expenses" was based on a legal issue, and that the repeated claims could not be considered either as 'concealment of particulars of income' or 'inaccurate furnishing of particulars of income'. the Ld. CIT(Appeals) have erred in confirming the order of the Ld. AO levying penalty on claim of expenses incurred towards "Land Compensation and Rehabilitation".

2(b) That on the facts and in the circumstances of the case. the Ld. CIT(Appeals) have erred in confirming penalty, without appreciating the explanations offered by the assessee for substantiating its claim with respect to 'points of law' and that the penalty under section 271(1)(c) can only be imposed for inadequate/ mala-fide explanations offered by the assessee with respect to 'facts'. The Ld. CIT(Appeals) erroneously distinguished the case of Reliance Petro Products Pvt. Ltd v. CIT [2010] 322 ITR 158 (SC) allegedly on 'factual difference', without appreciating that the said case lays down proposition of law which still applies to the appellant's case.

2(c) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) while upholding the penalty have erred in not considering the fact that the Appellant has filed an appeal before the Hon'ble High Court of Chhattisgarh with respect to the disallowance sustained by the Hon'ble Nagpur Income Tax Appellate Tribunal ("ITAT") in its own case in earlier years wherein the Hon'ble ITAT has itself held that the issue of whether the

land compensation and rehabilitation expenses is revenue or capital in nature, is a debatable and legal issue.

2(d) That on the facts and in circumstances of the case the Ld. CIT(Appeals) have erred in not considering the fact that the appellant company is an undertaking of the Government itself and the directors do not have any share in profits of the company and therefore, it cannot reasonably be inferred that there was a mala fide intention for avoidance of tax.

3(a) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in upholding the penalty on claim made by the company w.r.t. "provisions for leave encashment" on the alleged contention that claim of expenditure which is not admissible in law tantamount to furnishing inaccurate particulars of income.

3(b) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in uploading the penalty on claim of "provisions for leave encashment" of Rs.11,385.80 lakhs, without appreciating the fact that the income tax department's appeal on such issue is still pending or adjudication before the Hon'ble Supreme Court in the case of Exido Industries Limited.

3(c) On the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in upholding the penalty on claim of "provision for leave encashment" solely on the ground of admissibility of claims without appreciating that mere rejection of claim by the assessing officer would not tantamount to furnishing of inaccurate particulars of income leading to levy of penalty.

4. That the appellant craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or at the hearing of this appeal."

Also the assessee has raised an additional ground of appeal before us on 13.09.2019 which reads as under :

"5. That the Ld. AO erred in levying penalty under section 271(1)(c) read with section 274 of the Income Tax Act, 1961 without specifying whether it is for "concealment of Income" or for "furnishing of inaccurate particulars of income" in the notice given along with the Assessment order dated 29 November 2011 passed under section 143(3) of the Act and therefore, the impugned penalty order dated 19 February 2013 passed by him is bad in law, thus, deserves to be quashed."

On the other hand the revenue has assailed the order of the CIT(A) by raising the following grounds of appeal before us:

ITA No.152/RPR/2014

> "1.While deleting penalty imposed by the A.O for inadmissible guest house maintenance expenses of Rs.1,21,000/- even no admissible evidence could be produced before the CIT(A) himself by the assessee.
> 2. The Ld. CIT(A) has erred in law and on facts in canceling penalty for the repairs of the road not belonging to the assessee to the extent of Rs.4,77,31,000/-
>
> 3. The ld. CIT(A) has erred in law and on facts in cancelling the penalty imposed by the A.O for Rs.72,08,66,000/- without appreciating the fact that assessee had failed to furnish details of quantity transported and rate charged by the transporters."

2. Succinctly stated, the assessee which is a public limited company and a subsidiary of Coal India Limited is engaged in the activities related to development of mines and extraction of coal from various mines under its control and earns income from sale of coal. The assessee company had filed its original return of income for A.Y. 2009-10 on 25.09.2009, declaring an income of Rs.174554.12 lacs (approx.) under the normal provisions of the Act, while for its "book profit" under Sec.115JB of the Act was shown at Rs. 180919.45 lacs approx.). The return of income filed by the assessee company was processed as such under Sec.143(1) of the Act on 31.03.2011.

Subsequently, the case of the assessee was selected for scrutiny assessment under Sec.143(2) of the Act.

3. Original assessment was framed by the A.O vide his order passed under Sec.143(3) of the Act, dated 29.12.2011, wherein the income of the assessee was assessed at Rs.23685.49 lacs (approx.) after, inter alia, making certain additions/disallowances, which after being scaled down by the CIT(A) remained as under :-

S. No.	Particulars	Amount (Rs.in lakhs)
1.	Disallowance of land compensation and rehabilitation expenses	6193.10
2.	Disallowance of assesses claim of deduction of provision for leave encashment	11385.80
3.	Disallowance out of guest house expenses	1.21
4.	Disallowance of expenditure on assets not belonging to the assessee company	477.31
5.	Disallowance of payment made to ESM transporters	7208.66

4. The A.O while framing the assessment vide his order passed under Sec.143(3) of the Act, dated 29.12.2011 had also initiated penalty proceedings under Sec.271(1)(c) of the Act for furnishing of inaccurate particulars of income and concealment of income w.r.t the additions/disallowances that were made in the hands of the assessee

company, which for the sake of ready reference are culled out as under:

S. No.	Particulars	Mention of limb for initiating penalty in quantum assessment order dated 29.12.2011 passed u/s. 143(3) of the Act
1.	Disallowance of land compensation and rehabilitation expenses	For "furnishing inaccurate particulars of income"
2.	Disallowance of assesses claim of deduction of provision for leave encashment	For "concealment of income"
3.	Disallowance out of guest house expenses	For "furnishing inaccurate particulars of income"
4.	Disallowance of expenditure on assets not belonging to the assessee company	
5.	Disallowance of payment made to ESM transporters	

The A.O a/w the assessment order issued a "Show Cause" notice (SCN), dated 30.12.2011 u/s. 274 r.w.s. 271(1)(c) of the Act.

5. After the order passed by the CIT(A), dated 30.08.2012 disposing off the quantum appeal of the assessee, the A.O vide a SCN, dated 30.01.2013 called upon the assessee to explain as to why penalty under Sec.271(1)(c) of the Act may not be imposed on it w.r.t. the additions/disallowances that were sustained by the CIT(A). As the reply filed by the assessee did not find favor with the A.O, therefore, he vide his order passed under Sec.271(1)(c) of the Act, dated

19.02.2013 saddled it with a penalty of Rs. 8587.95 lacs (approx.) for concealment of income and furnishing of inaccurate particulars of income w.r.t the aforesaid additions/disallowances that were sustained/upheld by the CIT(Appeals), as under:

S. No.	Particulars	Mention of limb for levying penalty in penalty order dated 19.02.2013
1.	Disallowance of land compensation and rehabilitation expenses	For "furnishing inaccurate particulars of income"
2.	Disallowance of assesses claim of deduction of provision for leave encashment	
3.	Disallowance out of guest house expenses	For "furnishing inaccurate particulars of income"
4.	Disallowance of expenditure on assets not belonging to the assessee company	For "concealment of income"
5.	Disallowance of payment made to ESM transporters	For "furnishing inaccurate particulars of income"

6. Aggrieved, the assessee assailed the order passed by the A.O under Sec.271(1)(c) of the Act, dated 19.02.2013 before the CIT(A), who partly sustained the order of the A.O, observing as under:-

> "2.3 After considering the explanation furnished by the appellant company, the AO imposed penalty under the aforesaid section for furnishing inaccurate particulars of income in the return and concealing its particulars of income by claiming wrong deduction. The defense of the appellant company is that full and true disclosure in computation bf income which is accompanied to the return of income has been made and hence, there is neither concealment nor inaccurate particulars of income filed within the meaning of section 271(1)(c) of the Act.

2.3.1 Section 271(1)(c) of the Act provides for imposition of penalty in case the AO, in the course of any proceedings under the Act, is satisfied that any person has concealed particulars of his income or has furnished inaccurate particulars of such income. Explanation-1 to Sub section (1).to Section 271 of the Act provides that where in respect of any facts material to the computation of the total income of any person, such person fails to offer an explanation or offers an explanation which is found to be false or he offers an explanation, Which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of its income, have been disclosed by him then the amount added or disallowed in computing the total income of such person as a result thereof shall for the purpose of clause (c), be deemed to represent the income in respect of which Particulars have been concealed. Thus, in the case of failure of the assessee to offer any explanation or explanation furnished by him being found false, penalty may be imposed on him. However, if the assessee offers an explanation, mere failure on his part to substantiate it will not be enough to warrant penalty, if the explanation is bonafide, and all the facts relating to the same were disclosed by him in the return. Explanation-1 to Section 271(1)(c) would be inapplicable in respect of any amount added or disallowed as a result of rejection of the explanation furnished by the assessee, provided that his explanation is shown to be bonafide and all the facts relating to the same and material to the computation of total income was disclosed by him. The position of law, thus emerges is that so long as the assessee has not concealed any material fact, or the factual information given by him has not been found to be incorrect, he will not be liable to imposition of penalty u/s 271(1)(c) of the Act, even the claim made by him is unsustainable in law, provided that the either substantiated explanation offered by him or the explanation offered by him, even if -not substantiated, is found to be bonafide. In other words, if the explanation is neither substantiated nor shown to be bonafide, Explanation-1 to Section 271(1)(c) would come into play and the assessee will be liable to penalty' leviable u/s 271(1)(c) of the Act in respect of the additions or disallowances made by the AO in the assessment.

The expression used in clause (c) is "has concealed the particulars of his income" or "furnished inaccurate particulars of such income". Therefore, both in cases of concealment and inaccuracy, the phrase "particulars of income" is used. It will be noted that as regards concealment the expression in clause (c) is "has concealed the particulars of his income" and not "has concealed his income". It is obvious that the penal provisions would operate when there is a failure of duty, to disclose fully and truly particulars of income, imposed under the Act and the Rules thereunder. The duty is

enjoined upon a person to make a correct and complete disclosure of his income and it is only when he fails in his duty by not disclosing his income or part thereof, he conceals the particulars of his income. The duty is enjoined upon him to make a complete disclosure of his income as well as a correct disclosure. Therefore, if the disclosure made of the particulars of income is incorrect, then also be commits breach of his duty. Such defaults entail the penal consequences contemplated by s. 271(1)(c)(iii) of the Act.

Under s.139(1) of the Act, it is inter alia provided that every person, if his total income in respect of which he is a8sessable under the Act during the previous year, exceeded the maximum amount which was not chargeable to income-tax, shall furnish a return of his income in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed. It is, therefore, obligatory on a person whose total income exceed the maximum amount which was not chargeable to income tax, to furnish a return of his income during the 'previous year, in the prescribed forth. Such return is required to be verified in the prescribed manner. Not only is he obliged to furnish return of his income, meaning thereby to disclose fully and truly all his income, but he is also required to set forth 'other particulars' as may be prescribed. The word 'prescribed' as defined by s. 2(33) of the Act means, 'prescribed by the Rules under the Act'. The forms are accordingly prescribed by the Rules framed under the Act. Section 140 of the Act lays down as to by whom such return can be signed and verified.

It will, thus, be seen that the form of return of income included a variety of particulars to be disclosed and the particulars of income to be disclosed can be seen against the items which related to disclosure of income besides particulars other than those which related to the income of the assessee, such as his name, address, status etc. The forms of returns are obviously prepared in the context of the duty of a person to disclose his income from various sources under various heads of income as statutorily provided and his duty to disclose his total income in the return. The extent of his total income will determine the total income-tax liability of a person. "Total income" is defined in s. 2(45) of the Act and it means the total amount of income computed in the manner laid down in the Act. Thus, for arriving at the total income, the income derived from all sources is to be considered as provided by section 5, when it is received or deemed to be received by a person. All income for the purpose of charge of income-tax and computation of total income is required to be classified under distinct heads of income such as salaries, income from house property, profits and gains of business or profession, capital gains and income from other sources.

Thus, under each head of income, there are provisions for deductions which are to be made while computing the income chargeable under that head. It, therefore, follows that it is an obligatory duty cast upon a person filing the return of income to disclose all his income derived from any source under various heads and indicate the income under each head, which is chargeable to income-tax, after making the permissible deductions. Disclosure of income would be disclosure of particulars of income, which a person is duty-bound to disclose in fulfilment of his statutory obligations to pay tax on the income chargeable to tax.

It is in the background of discharge of these statutory obligations of an assessee to fully and truly disclose his income under various heads and indicate the income under those heads which is chargeable to income-tax after making permissible deductions, applicability of provisions of section 271(1)(c) is to be viewed. If a person obliged to furnish the particulars of his income, omits to furnish them, he thereby conceals the particulars. This concealment may take various forms like non-disclosure of particular head of income. The obligation is not only to disclose particulars of income but to disclose them correctly and completely. If, while disclosing the particulars of income in the return, he puts them under a wrong head, he can be said to be furnishing inaccurate particulars of income. The particulars of income can be made inaccurate in variety of ways, a glaring illustration of which would be where the assessee, while stating the income under a particular head, works out the income chargeable to tax after making deductions which are falsely made. Such a process would make the particulars of income inaccurate. In such cases, whether the income is not disclosed against the constituent item of the return in which it falls or is partly not disclosed, or the particulars of income given in the return are incorrectly stated by any machination, the impact is bound to be on the figure of gross total income to be mentioned under various heads of income and also on the total income chargeable to tax. In fact, reducing the figure of income that would be chargeable to tax would be the purpose of concealment of particulars of income or giving inaccurate particulars of income. The expression "particulars of income" would have relevance to all the particulars of income which the .assessee is required to give in his return fully and truly including the particulars of income chargeable to tax under various heads and the total income. Therefore, any concealment or inaccuracy in the particulars of income in the return occurring at any stage upto and inclusive of the ultimate stage of working out of total income would attract the penalty provision of s. 271(1)(c) of the Act. Every figure in the return which is set opposite to the item of income is a particular of income, whether the figure is one which is stated independently of anything else that appears in the return or the documents

accompanying it or whether it is something derived from other figures elsewhere stated in such return or documents. False result may be produced by the falsity of one or more of the constituent items in the return. The words inaccurate particulars would cover falsity in the final figure as also the constituent elements or items. They simply would mean inaccurate in some specific or definite respect whether in the constituent or subordinate items of income or the. end result. [Relied on A.M. Shah Vs. CIT 238 in 415 (Guj)].

2.3.2 Corning back to the case of the appellant company, addition of Rs.1.27 lakhs, Rs. 477.31 lakhs and Rs. 7208.66 lakhs out of partial disallowance of expenses under the head "Guest House Expenses", "Expenses on assets not belonging to the appellant company" and "Payments made to Transporters" was confirmed by the Appellate Authority. The appellant company has preferred appeal before the Hon'ble Tribunal against the order of CIT(Appeals), Bilaspur confirming the additions partially, but there is no specific request from its side to penalty proceedings against the impugned penalty order pending tilldisposal of the quantum appeal before the Hon'ble Tribunal. However, the reasons for addition were the failure on the part of the company to furnish details of expenses with proper evidence and though the additions are confirmed partially by the Appellate Authority, 1 find that there is neither the element of concealment of income nor any inaccurate particulars of income furnished in the return. The AO has not brought out any falsity or bogus claim of expenditure incorporated under the above heads of expenses. Therefore, it is found that the submission of the Ld. AR is acceptable and hence, no penalty under the aforesaid section is imposable against such addition.

Regarding claim of "Land Compensation and Rehabilitation Expenses" as revenue expenditure, the Hon'ble Tribunal has held the expenditure as capital in nature. But, the appellant company has been consistently claiming it as revenue expenditure. Even after finality of the fact, continuity in incorrect claim in law for expenditure on land compensation and rehabilitation which has resultant effect of reducing the taxable income to that extent and thus, it amounts to giving inaccurate particulars of income in the return. The explanation offered by the appellant company is neither bonafide nor substantiated. Reliance is placed in the decision of AM Shah Vs. CIT 238 IT12 415 (Guj); GT Vs. Sint. P.K. Koehammu Anna, Peroke 125 ITR 624; ALIT Vs. Khanna Annadhnam 142 TTJ 1 (Del) and it is held that penalty for furnishing such inaccurate particulars of expenses attracts penalty u/s 271(1)(c) of the Act.

Similarly, regarding imposition of penalty against addition of Rs.11385.80 lakhs made by disallowing provisions for leave

encashment it is not the case of the appellant company that provisions of section 43B(f) is not attracted. In other words, the liability since not paid by the time return of income was filed, the appellant appreciates the non-admissibility of the expenditure. But, it claimed the expenditure in the P&L A/c simply by placing reliance in the decision of the Hon'ble Kolkata High Court in the case of Exide Industries Limited Vs. UOI 164 Taxman 9. It took no cognizance of revenue's Special Leave Appeal before the Hon'ble Apex Court and the Hon'ble Apex Court's interim order dated 08-05-2009 wherein, it is observed that the assessee would during pendency of the Civil Appeal pay tax as if section 43B(f) in statute book. From a reading of the above. Hon'ble Supreme Court order, it is clear that sec. 43B(f) is in the statute book during the pendency of the civil appeal. It cannot be said that sec. 43B(f) is in respect of only those assesses before the Supreme Court. The order of the Hon'ble Supreme Court cannot be interpreted to mean that the parties before the Hon'ble Supreme Court alone need to take note of the provisions of sec. 43B(f) of the Act. It appears that the appellant took cognizance of interim order of the Hon'ble Supreme Court while paying advance tax, but finally it was claimed as admissible expenditure in the P & L A/c. The appellant has claimed expenditure which is not admissible in law and thereby furnished inaccurate particulars of income the resultant effect being reduction in taxable income to tax extent. In this regard, reliance is placed in the decision of the cases discussed above.

The position of law emerging from the factual matrix of the case in Reliance Petro Products Pvt. Ltd. Vs. CIT is that the addition made by the AO in respect of the interest claimed as a deduction u/s 36(l)(iii) of the Act was deleted by the CIT(A) though it was later restored by the Tribunal to the AO. The appeal filed by the assessee against the order of the Tribunal was admitted by the High Court. It was, in these circumstances that the Tribunal came to the conclusion that the assessee had neither concealed the income nor filed inaccurate particulars thereof. In recording this finding the tribunal felt that if two views of the claim of the assessee were possible, the explanation offered by it could not be said to be false. This, however, is not the factual position in the case in hand and the facts of the present case are clearly distinguishable. It is true that mere submitting a claim which is incorrect in law would not amount to giving inaccurate particulars of income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be bonafide. If the claim besides being incorrect in law is malafide, Explanation-1 to Section 271(1) come into play and work to the disadvantage of the appellant company.

In the given facts and circumstances of the case and legal propositions, it is held that the explanation furnished by the appellant

> company justifying deduction on Land Compensation and Rehabilitation Expenses and provisions for Leave Encashment is not bona fide or substantiated and hence, presumption in Explanation-1 to section 271(1)(c) is attracted. The minimum penalty imposed against such additions is confirmed for furnishing inaccurate particulars of income in the return. Penalty imposed against other additions as discussed above is cancelled."

7. The assessee being aggrieved with the order of the CIT(Appeals) to the extent he had upheld the penalty imposed by the Assessing Officer u/s 271(1)(c) of the I.T Act has carried the matter in appeal before us. It was submitted by the ld. A.R that the A.O had issued two "Show cause" notices (SCN) to the assessee under Sec. 274 rw.s 271(1)(c) of the Act, dated 30.12.2011, Annexure-2 of the assessee's compilation and dated 15.01.2013, Anneure-3 of the assessee's compilation. It was the claim of the ld. A.R that as the Assessing Officer had failed to point out the specific default in both the "Show Cause" notices (herein referred to as 'SCN's) issued u/s 274 r.w.s 271 of the Act, dated 30.12.2011(supra) and dated 15.01.2013 (supra) for which the assessee was called upon to put forth an explanation that as to why it may not be saddled with the same, therefore, the penalty thereafter imposed by him u/s 271(1)(c) of the I.T. Act cannot be sustained and is liable to be vacated. The ld. AR in order to drive home his aforesaid claim had drawn our attention to both of the aforesaid

SCN's, i.e dated 30.12.2011 and 15.01.2013. Referring to the aforesaid discrepancy in the SCN's, dated 30.12.2011 and 15.01.2013, it was submitted by the ld. AR that as the AO had failed to validly put the assessee to notice as regards the specific default for which the impugned penalty under Sec. 274 r.w.s 271(1)(c) was sought to be imposed on it, therefore, the assessee had remained divested of an opportunity to put forth in its defense a clear explanation that no such penalty u/s 271(1)(c) was called for in its case. The ld. AR in support of its aforesaid contention had relied on a host of judicial pronouncements, as under:

(i). CIT Vs. Manjunatha Cotton & Ginning Factory
(2013) 35 taxmann.com 250 (Karnataka)

(ii). Mohd. Farhan A. Shaikh Vs. PCIT
(2021) 434 ITR 1 (Bombay)(FB)

(iii). CIT Vs. Samson Perinchery
(2007) 392 ITR 4 (Bombay)

(iv). Pr. CIT (Central) Vs. Golden Peace Hotels and Resorts (P) Ltd.
(2021) 124 tamnn.com 249 (SC)

(v). PCIT Vs. Goa Coastal Resorts and Recreation (P) Ltd.
(2021) 130 taxmann.com 379 (SC)

(vi). Dilip N. Shroff Vs. JCIT
(2007) 161 Taxman 218 (SC).

8. Per contra, the Ld. Departmental Representative (for short 'D.R') relied upon the orders of the lower authorities. It was submitted by the Ld. D.R that as the assessee was afforded sufficient opportunity in the course of penalty proceedings, thus, it was incorrect on its part to claim that no opportunity of being heard was afforded to it. It was submitted by the ld. D.R that now when the assessee company in compliance to the SCN, dated 30.12.2011 r.w SCN, dated 30.01.2013 had come forth with an explanation that no penalty u/s 271(1)(c) of the Act was called for in its hands, therefore, it was beyond comprehension that as to on what basis it could thereafter claim that it was not validly put to notice about the default for which penalty u/s.271(1)(c) of the Act was sought to be imposed on it.

9. We have heard the ld. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Admittedly, on a perusal of the SCN, dated 30.12.2011, it stands revealed that the Assessing Officer had failed to strike-off the irrelevant default while calling upon the assessee to

explain as to why it may not be subjected to penalty u/s 271(1)(c) of the Act. For the sake of clarity, the SCN dated 30.12.2011 (as per Annexure 2 of assessee's compilation dated 13.03.2019) is culled out as under:

Recd on 11/01/2012

I.T.N.S.- 29

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

GIR/PAN: AADCS2066E (797/3)

To,

M/s South Eastern Coalfields Ltd.
Seepat Road, Bilaspur (C.G.).

OFFICE OF THE
JOINT COMMISSIONER OF INCOME TAX,
RANGE-1, MAHIMA COMMERCIAL COMPLEX,
VYAPAR VIHAR, BILASPUR (C.G.)

Dated: 30.12.2011

Whereas in the course of proceedings before me for the assessment year 2009-10 it appears to me that you:-

* have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 22(1)/22(2)/34 of the Indian Income Tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148 of the Income Tax Act, 1961, No. ..... Dated..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.

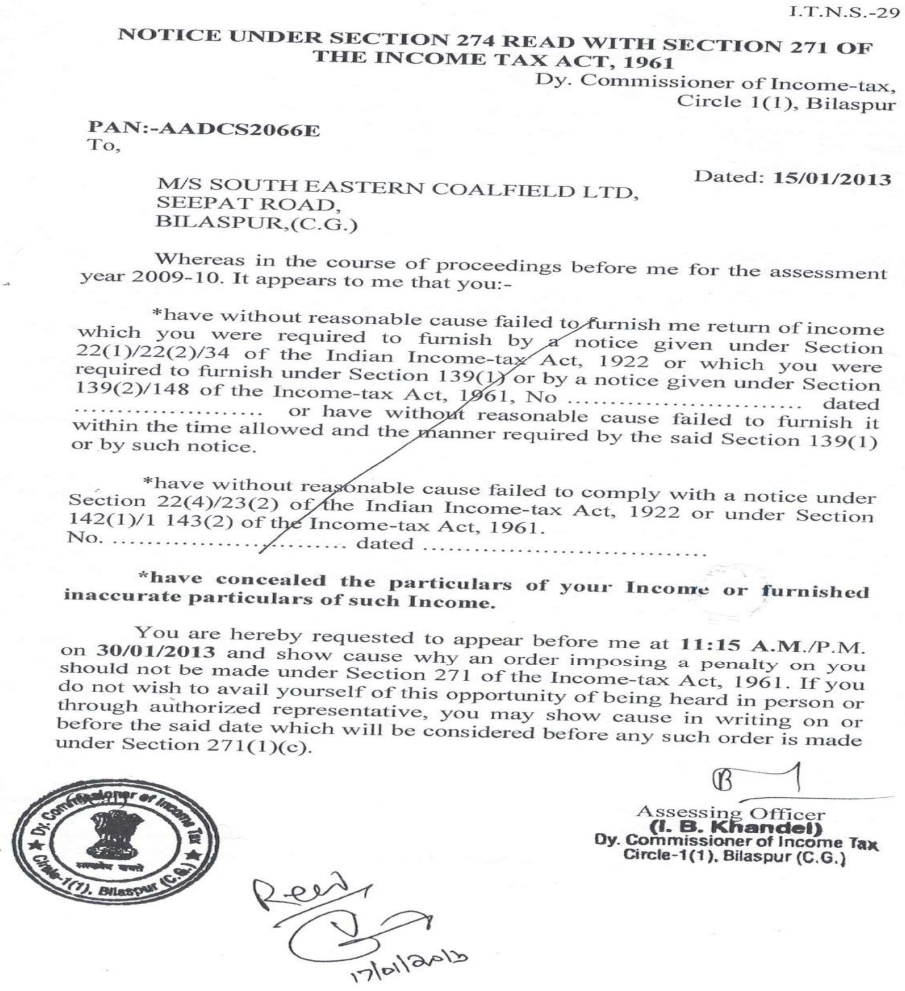
* have without reasonable cause failed to comply with a notice under section 22(2)/23(2) of the Indian Income Tax Act, 1922 or under section 142(1)/143(2) of the Income Tax Act, 1961.

*** have concealed the particulars of your Income or ..... furnished inaccurate particulars of such Income.**

You are hereby requested to appear before me at my Office at Mahima Commercial Complex, Vyapar Vihar, Bilaspur on 24.01.2012 at 12.00 NOON/a.m. and show-cause why an order imposing a penalty on you should not be made under section 271 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 show cause in writing on or before the said date which will be considered before any such order is made under section 271(1) (c).

(M. K. Sharma)
Joint Commissioner of Income Tax,
Range-1, Bilaspur (CG)
(M.K. Sharma)
Jt. Commissioner of Income Tax
Range - 1, Bilaspur (C.G.)

It may be observed, that the aforesaid SCN, dated 30.12.2011 (supra) was thereafter followed by another SCN, dated 15.01.2013 (wrongly mentioned by the A.O in his order u/s 271(1)(c) as 30.01.2013, which in fact was the date when the assessee was directed to appear before the A.O). However, in the SCN, dated 15.01.2013 also the A.O had failed to point out the specific default for which the assessee was being called upon to explain that as to why it may not be saddled with penalty u/s 271(1)(c) of the Act. Once again for the sake of clarity the SCN dated 15.01.2013 (as per Annexure 3 of assessee's compilation dated 13.03.2019) is culled out as under:



I.T.N.S.-29

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Dy. Commissioner of Income-tax,
Circle 1(1), Bilaspur

PAN:-AADCS2066E
To,

Dated: **15/01/2013**

M/S SOUTH EASTERN COALFIELD LTD,
SEEPAT ROAD,
BILASPUR,(C.G.)

Whereas in the course of proceedings before me for the assessment year 2009-10. It appears to me that you:-

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under Section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961, No ..... dated ..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under Section 142(1)/1 143(2) of the Income-tax Act, 1961.
No. ..... dated .....

***have concealed the particulars of your Income or furnished inaccurate particulars of such Income.**

You are hereby requested to appear before me at **11:15 A.M./P.M.** on **30/01/2013** and show cause why an order imposing a penalty on you should not be made under Section 271 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 show cause in writing on or before the said date which will be considered before any such order is made under Section 271(1)(c).

Assessing Officer
(I. B. Khandei)
Dy. Commissioner of Income Tax
Circle-1(1), Bilaspur (C.G.)

Dy. Commissioner of Income Tax Circle-1(1), Bilaspur (C.G.)

17/01/2013

As such the aforesaid failure to point out the specific default for which penalty u/s 271(1)(c) was sought to be imposed, viz. "concealment of the particulars of income" or "furnishing of inaccurate particulars of income" or both the said defaults, was allowed by the A.O to perpetuate in the SCN, dated 15.01.2013 (supra). At this stage, we may herein observe that though the A.O while framing the assessment vide his order passed u/s.143(3), dated 29.12.2011, had initiated the

penalty proceedings u/s.271(1)(c) for both "concealment of income" and furnishing of inaccurate particulars of income w.r.t the various additions/disallowances under consideration, but the usage of the term "OR" as a conjunction between the two defaults, i.e. *"concealed the particulars of your income or furnished inaccurate particulars of such income"* in no clear terms conveyed to the assessee the specific defaults for which the penalty proceedings were sought to be proceeded with in its hands. In sum and substance, the A.O in neither of the aforesaid SCN's dated 3012.2011 and 15.01.2013 (supra) had validly put the assessee to notice as regards the default for which it was called upon to put forth an explanation that as to why penalty u/s.271(1)(c) may not be imposed on it. As the A.O had while framing the assessment initiated penalty u/s.271(1)(c) for both the defaults, i.e. "concealment of income" and "furnishing of inaccurate particulars of income" w.r.t. the aforesaid additions/disallowances, therefore, he under such circumstances was obligated to have validly put the assessee to notice and called for his explanation that as to why penalty u/s.271(1)(c) may not be imposed on it for both the defaults w.r.t the additions/disallowances in question, i.e. "concealed the particulars of income and furnished inaccurate particulars of such income". As the

A.O by using "OR" as a conjunction between both the aforesaid defaults had not only failed to validly convey to the assessee company in clear terms the specific defaults for which the penalty was sought to be imposed in its case, but had in fact kept the latter guessing about the default/defaults for which penalty was sought to be imposed in its case.

10. Insofar the validity of the jurisdiction assumed by the A.O for imposing penalty u/s 271(1)(c) is concerned, we find that the same has been assailed before us on the ground that as the A.O had in the aforesaid 'Show cause' notice(s), dated 30.12.2011 and 15.01.2013 failed to point out the specific defaults for which penalty u/s.271(1)(c) was sought to be imposed in its case, therefore, the assessee company was not validly put to notice as regards the default/defaults for which it was called upon to explain that as to why penalty may not be imposed on it under Sec. 271(1)(c) of the I.T Act.

11. We have given a thoughtful consideration to the facts of the case, and are persuaded to subscribe to the claim of the Ld. AR that the A.O in both the aforesaid SCN's dated 30.12.2011 and 15.01.2013 had failed to point out the defaults for which penalty was sought to be

imposed on the assessee company. In our considered view, as both of the two defaults envisaged in Sec. 271(1)(c) i.e 'concealment of income' and 'furnishing of inaccurate particulars of income' are separate and distinct defaults which operate in their respective independent and exclusive fields, therefore, it was obligatory for the A.O to have clearly put the assessee company to notice as regards the defaults for which it was being called upon to explain that as to why penalty under Sec. 271(1)(c) may not be imposed on it. As observed by us hereinabove, a perusal of the 'Show cause' notice(s) issued in the present case by the A.O under Sec. 274 r.w. Sec. 271(1)(c), dated 30.12.2011 and 15.01.2013 clearly reveals that there was no application of mind by the A.O while issuing the same. We, say so, for the reason that the A.O by using the term "OR" as a conjunction between both the defaults, i.e. *"concealed the particulars of your income or furnished inaccurate particulars of such income"*, had clearly failed in his statutory obligation of conveying and validly putting the assessee company to notice that w.r.t. the additions/disallowances under consideration penalty was sought to be imposed upon it for both the said defaults; and, thus, had divested it from putting forth its defense that no such penalty was called for in its case. We are of a strong conviction that

the very purpose of affording a reasonable opportunity of being heard to an assessee as per the mandate of Sec. 274(1) of the Act would not only be frustrated, but would be rendered as redundant if the assessee is not conveyed in clear terms the specific default for which penalty under the said statutory provision was sought to be imposed on him. In our considered view, the indispensable requirement on the part of the A.O to put the assessee to notice as regards the specific charge contemplated under the aforesaid statutory provision, viz. 'concealment of income' or 'furnishing of inaccurate particulars of income' or both of the said defaults is not merely an idle formality, but is a statutory obligation cast upon him, which we find had not been discharged in the present case as per the mandate of law.

12. We would now test the validity of the aforesaid 'Show Cause' notice(s) dated 30.12.2011 and 15.01.2013, and the jurisdiction emerging therefrom in the backdrop of the judicial pronouncements on the issue under consideration. Admittedly, the A.O is vested with the powers to levy penalty under Sec. 271(1)(c) of the Act, if in the course of the proceedings he is satisfied that the assessee had either 'concealed his income' or 'furnished inaccurate particulars of his income' or had committed both the defaults w.r.t. the various

additions/disallowances made in its hands while framing the assessment. In our considered view as penalty proceedings are in the nature of *quasi criminal* proceedings, therefore, the assessee as a matter of a statutory right is supposed to know the exact charge for which he is being called upon to explain that as to why the same may not be imposed on him. The non-specifying of the charge in the 'Show cause' notice not only reflects the non-application of mind by the A.O, but in fact defeats the very purpose of giving a reasonable opportunity of being heard to the assessee as envisaged under Sec. 274(1) of the I.T Act. We find that the fine distinction between the said two defaults contemplated in Sec. 271(1)(c), viz. 'concealment of income' and 'furnishing of inaccurate particulars of income' had been appreciated at length by the **Hon'ble Supreme Court** in its judgments passed in the case of **Dilip & Shroff Vs. Jt. CIT (2007) 210 CTR (SC) 228** and **T. Ashok Pai Vs. CIT (2007) 292 ITR 11 (SC)**. The Hon'ble Apex Court in its aforesaid judgments had observed that the two expressions, viz. 'concealment of particulars of income' and 'furnishing of inaccurate particulars of income' have a different connotation. The Hon'ble Apex Court was of the view that the non-striking off the

irrelevant limb in the notice clearly revealed a non-application of mind by the A.O, and had observed as under:-

> "83. It is of some significance that in the standard proforma used by the Assessing Officer in issuing a notice despite the fact that the same postulates that inappropriate words and paragraphs were to be deleted, but the same had not been done. Thus, the Assessing Officer himself was not sure as to whether he had proceeded on the basis that the assessee had concealed his income or he has furnished inaccurate particulars. Even before us, the learned Additional Solicitor General while placing reliance on the order of assessment laid emphasis that he had dealt with both the situations.
>
> 84. The impugned order, therefore, suffers from non-application of mind. It was also bound to comply with the principles of natural justice [See Malabar Industrial Co. Ltd. Vs. CIT (2000) 2 SCC 718].

We are of the considered view that now when as per the settled position of law the two defaults, viz. 'concealment of income' and 'furnishing of inaccurate particulars of income' are separate and distinct defaults, therefore, it was incumbent on the part of the A.O to have clearly specified his said intention in the 'Show cause' notices dated 30.12.2011 (supra) and 15.01.2013 (supra), which we find he had failed to do in the case before us. The aforesaid failure of the A.O cannot be merely dubbed as a technical default as the same had clearly divested the assessee of its statutory right of an opportunity of being heard and defend its case.

13. We find that the **Hon'ble High Court of Karnataka** in the case of **CIT Vs. SSA's Emerald Meadows (73 taxmann.com 241)(Kar)** following its earlier order in the case of **CIT Vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Kar)**, had held that where the notice issued by the A.O under Sec. 274 r.w Sec. 271(1)(c) does not specify the limb of Sec. 271(1)(c) for which the penalty proceedings were initiated, i.e. whether for 'concealment of particulars of income' or 'furnishing of inaccurate particulars', then, the same has to be held as bad in law. The 'Special Leave Petition' (for short 'SLP') filed by the revenue against the aforesaid order of the **Hon'ble High Court of Karnataka** had been dismissed by the **Hon'ble Supreme Court** in **CIT Vs. SSA's Emerald Meadows (2016) 73 taxmann.com 248 (SC).** Apart from that, we find that a similar view had been taken by the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Samson Perinchery (ITA No. 1154 of 2014; Dt. 05.01.2017)(Bom).** The Hon'ble High Court relying on the judgment of the Hon'ble High Court of Karnataka in the case of Manjunathja Cotton and Ginning Factory (supra), which in turn had relied on the judgment of the Hon'ble Apex Court in T. Ashok Pai Vs. CIT, 292 ITR 1 (SC) had approved the order of the Tribunal that had deleted the penalty u/s 271(1)(c) imposed by

the A.O and had, inter alia, observed, that the failure of the AO to strike-off the irrelevant default in the notice issued under Sec. 274 of the Act which is in a standard proforma clearly indicates a non-application of mind by the A.O while issuing the notice. Further, we find that the **Hon'ble High Court of Bombay** in the case of Pr. **CIT (Central), Bengaluru Vs. Golden Peace Hotels & Resorts (P) Ltd. (2021) 124 tamnn.com 249 (SC)**, by drawing support from its earlier order in the case of **CIT Vs. Shri Samson Perinchery (2017) 392 ITR 4 (Bom)** and **PCIT Vs. New Era Sova Mine (2020) 420 ITR 376 (Bom),** had observed that AO while issuing show-cause should clearly indicate that as per him the case of the assessee involves concealment of particulars of income; or there is furnishing of inaccurate particulars. It was further observed, that if the notice is issued in the printed form, then, the necessary portions which are not applicable are required to be struck-off, so as to indicate with clarity the nature of the satisfaction recorded. The High Court observed that as in the case before them the AO had failed to strike-off the irrelevant default in the body of the SCN issued under Sec. 274 of the Act, therefore, the penalty imposed by the AO u/s 271(1)(c) of the Act was liable to be

vacated. For the sake of clarity the observations of the Hon'ble High Court of Bombay in its aforesaid order are culled out as under:

> "4. We have carefully examined the record as well as duly considered the rival contentions. Both the Commissioner (Appeals) as well as the ITAT have categorically held that in the present case, there is no record of satisfaction by the Assessing Officer that there was any concealment of income or that any well as in New Era Soya Mine (supra) has held that the notice which is inaccurate particulars were furnished by the assessee. This being a sine qua non for initiation of penalty proceedings, in the absence of such satisfaction, the two authorities have quite correctly ordered the dropping of penalty proceedings against the assessee.
>
> 6. Besides, we note that the Division Bench of this Court in Samson (supra) as applicable are required to be struck off, so as to indicate with clarity the nature of the satisfaction recorded. In both Samson Perinchery and New Era Soya furnishing of inaccurate particulars of income or both, with clarity. If the notice is issued in the printed form, then, the necessary portions which are not applicable are required to be struck off, so as to indicate clarity the nature of satisfaction recorded. In both Samson Perinchery and New Era Sova Mine (supra), the notices issued had not struck off the portion which were inapplicable. From this, the Division Bench concluded that there was no proper record of satisfaction or proper application of mind in matter of initiation of penalty proceedings.
>
> 7. In the present case, as well if the notice dated 30/09/16 (at page 32) is perused, it is apparent that the inapplicable portions have not been struck off. This coupled with the fact adverted to in paragraph (5) of this order, leaves no ground for interference with the impugned order. The impugned order is quite consistent with the law laid down in the case of Samson Perinchery and New Era Soya Mine (supra) and therefore, warrants no interference."

The Special Leave Petition (SLP) filed by the revenue against the aforesaid order had thereafter been dismissed by the **Hon'ble Apex Court** in **Pr. CIT (Central) Vs. Golden Peace Hotels and Resorts (P) Ltd. (2021) 124 taxmann.com 249 (SC).** Also, the "Full bench" of the

Hon'ble High Court of Bombay in the case of **Mohd. Farhan A. Shaikh V. DCIT, Central Circle-1, Bengaluru (2021) 280 Taxman 334** (Bombay), had observed that where the assessment order clearly records a satisfaction for imposing penalty on one or other; or both grounds mentioned in Sec. 271(1)(c), but there is a defect in the SCN, wherein the AO had failed to strike-off the irrelevant default, then, the same would vitiate the penalty proceedings. The Hon'ble High Court while concluding as hereinabove had held as under:

> " 173. We, however, accept that the Revenue, often, adopts a pernicious practice of sending an omnibus, catch-all, printed notice. It contains both relevant and irrelevant information. It assumes, perhaps unjustifiably, that whoever pays tax is or must be well-versed in the nuances of tax law. So it sends a notice without specifying what the assessee, facing penalty proceedings, must meet. In justification of what it omits to do, it will ask, rather expect, the assessee to look into previous proceedings for justification of its action in the later proceedings, which are, undeniably, independent. It forgets that a stitch in time saves nine. Its one cross or tick mark clears the cloud, enables the assessee to mount an effective defence, and, in the end, its diligence avoids a load of litigation. Is not prejudice writ large on the face of the mechanical methods the Revenue adopts in sending a statutory notice to the assessee under section 271 (1) (c) read with section 274 of the Act? Pragmatically speaking, Kaushalya casts an extra burden on the assessee and assumes expertise on his part. It wants the assessee to make up for the Revenue's lapses.
>
> Ex Post and Ex Ante Approaches of Adjudication:
>
> 174. In ex-post adjudication, the Court looks back at a disaster or other event after it has occurred and decides what to do about it or how to remedy it. In an ex-ante adjudication, the Court looks forward, after an event or incident, and asks what effects the decision about this case will have in the future—on parties who are entering similar situations and have not yet decided what to do, and whose choices may be influenced by the consequences the law says will follow from them. The first perspective also might be called static since it accepts the parties' positions as given and fixed; the second perspective is dynamic since it assumes their behaviour may

change in response to what others do, including judges. (for a detailed discussion, see Ward Farnsworth's Legal Analyst: A Toolkit for Thinking about the Law)[72].

175. Kaushalya has adopted an ex-post approach to the issue resolution; Goa Dourado Promotions, an ex-ante approach. Kaushalya saves one single case from further litigation. It asks the assessee to look back and gather answers from whatever source he may find, say, the assessment order. On the other hand, Goa Dourado Promotions saves every other case from litigation. It compels the Revenue to be clear and certain. To be more specific, we may note that if we adopt Kaushalya's approach to the issue, it requires the assessee to look for the precise charge in the penalty proceedings not only from the statutory note but from every other source of information, such as the assessment proceedings. That said, first, penalty proceedings may originate from the assessment proceedings, but they are independent; they do not depend on the assessment proceeding for their outcome. Assessment proceedings hardly influence the penalty proceedings, for assessment does not automatically lead to a penalty

176. Second, not always do we find the assessment proceedings revealing the grounds of penalty proceedings. Assessment order need not contain a specific, explicit finding of whether the conditions mentioned in section 271(1)(c) exist in the case. It is because Explanations 1(A) and 1(B), as the deeming provisions, create a legal fiction as to the grounds for penalty proceedings. Indeed, the Apex Court in CIT v. Atul Mohan Bindal [73], has explained the scope of section 271(1)(c) thus:

> "[Explanation 1, appended to section 27(1) provides that if that person fails to offer an explanation or the explanation offered by such person is found to be false, or the explanation offered by him is not substantiated, and he fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, for the purposes of section 271(1)(c), the amount added or disallowed in computing the total income is deemed to represent the concealed income."

177. That is, even if the assessment order does not contain a specific finding that the assessee has concealed income or he is deemed to have concealed income because of the existence of facts which are set out in Explanation 1, if a mere direction to initiate penalty proceedings under clause (c) of sub-section (1) is found in the said order, by legal fiction, it shall be deemed to constitute satisfaction of the Assessing Officer for initiation of penalty proceedings under the said clause (c). In other words, the Assessing Officer's satisfaction as to be spelt out in the assessment order is only prima facie. Even if the assessment order gives no reason, a mere direction for penalty proceedings triggers the legal fiction as contained in the Explanation (1).

178. Therefore, in every instance, it is a question of inference whether the assessment order contained any grounds for initiating the penalty proceedings. Then, whenever the notice is vague or imprecise, the assessee assails it as bad; the

Revenue defends it by saying that the assessment order contains the precise charge. Thus, it becomes a matter of adjudication, opening litigious floodgates. The solution is a tick mark in the printed notice the Revenue is used to serving on the assessees.

179. Besides, the prima facie opinion in the assessment order need not always translate into actual penalty proceedings. These proceedings, in fact, commence with the statutory notice under section 271(1)(c) read with section 274. Again, whether this prima facie opinion is sufficient to inform the assessee about the precise charge for the penalty is a matter of inference and, thus, a matter of litigation and adjudication. The solution, again, is a tick mark; it avoids litigation arising out of uncertainty.

180. One course of action before us is curing a defect in the notice by referring to the assessment order, which may or may not contain reasons for the penalty proceedings. The other course of action is the prevention of defect in the notice—and that prevention takes just a tick mark. Prudence demands prevention is better than cure.

Answers: Question No.1: If the assessment order clearly records satisfaction for imposing penalty on one or the other, or both grounds mentioned in Section 271(l)(c), does a mere defect in the notice—not striking off the irrelevant matter—vitiate the penalty proceedings?

181. It does. The primary burden lies on the Revenue. In the assessment proceedings, it forms an opinion, prima facie or otherwise, to launch penalty proceedings against the assessee. But that translates into action only through the statutory notice under section 271(1)(c), read with section 274 of IT Act. True, the assessment proceedings form the basis for the penalty proceedings, but they are not composite proceedings to draw strength from each other. Nor can each cure the other's defect. A penalty proceeding is a corollary; nevertheless, it must stand on its own. These proceedings culminate under a different statutory scheme that remains distinct from the assessment proceedings. Therefore, the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness.

182. More particularly, a penal provision, even with civil consequences, must be construed strictly. And ambiguity, if any, must be resolved in the affected assessee’s favour.

183. Therefore, we answer the first question to the effect that Goa Dourado Promotions and other cases have adopted an approach more in consonance with the statutory scheme. That means we must hold that Kaushalya does not lay down the correct proposition of law.

Question No.2: Has Kaushalya failed to discuss the aspect of 'prejudice'?

184. Indeed, Kaushalya did discuss the aspect of prejudice. As we have already noted, Kaushalya noted that the assessment orders already contained the reasons why penalty should be initiated. So, the assessee, stresses Kaushalya, “fully knew in detail the exact charge of the Revenue against him”. For Kaushalya, the statutory notice suffered from neither non-application of mind nor any prejudice. According to it, “the so-called ambiguous wording in the notice [has not] impaired or prejudiced the right of the assessee to a reasonable opportunity of being heard”. It went onto observe that for sustaining the plea of natural justice on the ground of absence of opportunity, “it has to be established that prejudice is caused to the concerned person by the procedure followed”. Kaushalya closes the discussion by observing that the notice issuing “is an administrative device for informing the assessee about the proposal to levy penalty in order to enable him to explain as to why it should not be done”.

185 No doubt, there can exist a case where vagueness and ambiguity in the notice can demonstrate non-application of mind by the authority and/or ultimate prejudice to the right of opportunity of hearing contemplated under section 274. So asserts Kaushalya. In fact, for one assessment year, it set aside the penalty proceedings on the grounds of non-application of mind and prejudice.

186. That said, regarding the other assessment year, it reasons that the assessment order, containing the reasons or justification, avoids prejudice to the assessee. That is where, we reckon, the reasoning suffers. Kaushalya’s insistence that the previous proceedings supply justification and cure the defect in penalty proceedings has not met our acceptance.

Question No.3: What is the effect of the Supreme Court’s decision in Dilip N. Shroff on the issue of non-application of mind when the irrelevant portions of the printed notices are not struck off ?

187. In Dilip N. Shroff, for the Supreme Court, it is of "some significance that in the standard Pro-forma used by the assessing officer in issuing a notice despite the fact that the same postulates that inappropriate words and paragraphs were to be deleted, but the same had not been done". Then, Dilip N. Shroff, on facts, has felt that the assessing officer himself was not sure whether he had proceeded on the basis that the assessee had concealed his income or he had furnished inaccurate particulars.

188. We may, in this context, respectfully observe that a contravention of a mandatory condition or requirement for a communication to be valid communication is fatal, with no further proof. That said, even if the notice contains no caveat that the inapplicable portion be deleted, it is in the interest of fairness and justice that the notice must be precise. It should give no room for ambiguity. Therefore, Dilip N. Shroff disapproves of the routine, ritualistic practice of issuing omnibus show-cause notices. That practice certainly betrays nonapplication of mind. And, therefore, the infraction of a mandatory procedure leading to penal consequences assumes or implies prejudice.

> 189. In Sudhir Kumar Singh, the Supreme Court has encapsulated the principles of prejudice. One of the principles is that "where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, "except in the case of a mandatory provision of law which is conceived not only in individual interest but also in the public interest".
>
> 190. Here, section 271(1)(c) is one such provision. With calamitous, albeit commercial, consequences, the provision is mandatory and brooks no trifling with or dilution. For a further precedential prop, we may refer to Rajesh Kumar v. CIT[74], in which the Apex Court has quoted with approval its earlier judgment in State of Orissa v. Dr. Binapani Dei[75]. According to it, when by reason of action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice must be followed. In such an event, although no express provision is laid down on this behalf, compliance with principles of natural justice would be implicit. If a statue contravenes the principles of natural justice, it may also be held ultra vires Article 14 of the Constitution.
>
> 191. As a result, we hold that Dilip N. Shroff treats omnibus show cause notices as betraying non-application of mind and disapproves of the practice, to be particular, of issuing notices in printed form without deleting or striking off the inapplicable parts of that generic notice.
>
> Conclusion: We have, thus, answered the reference as required by us; so we direct the Registry to place these two Tax Appeals before the Division Bench concerned for further adjudication."

Also, the **Hon'ble High Court of Bombay** in the case of **Pr. CIT (Central) Bengaluru Vs. Goa Coastal Resorts and Recreation Pvt. Ltd. (2020) 113 taxmann.com 574 (Bombay)**, had observed that where there was no recording of satisfaction by the AO in relation to any concealment of income or furnishing of inaccurate particulars by assessee in the notice issued for initiation of such proceedings, then, the Tribunal had in absence of said statutory requirement rightly vacated the penalty proceedings. Also, the **Hon'ble High Court of**

Bombay in the case of **PCIT, Panaji Vs. Goa Dourdo Promotions (P) Ltd. (2021) 433 ITR 268 (Bombay)** relying upon its earlier orders in the case of, viz.(i). Goa Coastal Resorts & Recreation P. Ltd. (supra); (ii). Samson Perinchery (supra); and (iii). New Era Sova Mine (supra), had observed that recording of satisfaction by AO in relation to any concealment of income or furnishing of inaccurate particulars by the assessee in notice issued u/s 271(1)(c) is the *sine qua non* for initiation of such proceedings. Further, we find that the **ITAT, Pune** in **Ashok Sahahakari Sakhar Karkhana Ltd. Vs. ACIT (2018) 99 taxman.com 374 (Pune),** had held that where in a notice issued u/s 274 of the Act the AO had used conjunction "or" to mention both limbs, i.e, concealment of income or furnishing inaccurate particulars of income and charge for levy of penalty was not explicitly clear from notice, then, the same was to be held as bad in law and penalty was liable to be set-aside. On a similar footing was the view taken by the **ITAT, Mumbai "B" Bench in ACIT Vs. Bhushan Kamanayan Vora (2018) 99 taxmann.com 373 (Mum)**. It was observed by the Tribunal that where the AO was not sure about the charge, i.e whether it was for concealment of income or furnishing of inaccurate particulars of

income, the penalty imposed by him u/s 271(1)(c) could not be sustained.

14. We have given a thoughtful consideration to the issue before us and after deliberating on the facts, are of the considered view, that the failure on the part of the A.O to clearly put the assessee to notice as regards the default for which penalty under Sec. 271(1)(c) was sought to be imposed on it by clearly and explicitly pointing out the specific defaults in the SCN(s), dated 30.12.2011 and 15.01.2013 for which the assessee was called upon to explain that as to why penalty u/s.271(1)(c) of the Act may not be imposed upon it, had, thus, left the assessee guessing of the default for which he was being proceeded against, and had divested it of an opportunity to put forth an explanation before the A.O that no such penalty was called for in its case. We, thus, in the backdrop of our aforesaid observations are of a strong conviction that as the A.O had clearly failed to discharge his statutory obligation of fairly putting the assessee to notice as regards the defaults for which it was being proceeded against, therefore, the penalty under Sec. 271(1)(c) of Rs. 8587.95 lac imposed by him being in clear violation of the mandate of Sec. 274(1) of the Act cannot be sustained. We, thus, for the aforesaid reasons not being able to

persuade ourselves to subscribe to the imposition of penalty by the A.O, therefore, set-aside the order of the CIT(A) who had upheld the same. The penalty of Rs. 8587.95 lac imposed by the A.O under Sec.271(1)(c) is quashed in terms of our aforesaid observations. The **additional ground of appeal** raised by the assessee is allowed in terms of our aforesaid observations.

15. As the penalty imposed on the assessee under Sec. 271(1)(c) of the Act had been quashed by us for want of valid assumption of jurisdiction on the part of the A.O, therefore, we refrain from adverting to and adjudicating the other grounds of appeal raised by the assessee, wherein on the basis of which it had assailed the penalty sustained by the CIT(Appeals) qua the merits of the case, which are, thus, left open.

16. That as we have while disposing off the appeal filed by the assessee company in ITA No.156/RPR/2014 had held that the A.O had wrongly assumed jurisdiction u/s.271(1)(c) of the Act, therefore, borrowing the said reasoning and basis the appeal filed by the revenue in ITA No.152/RPR/2014 in absence of valid assumption of jurisdiction by the A.O u/s.271(1)(c) of the Act is on the same terms dismissed. As the appeal filed by the department is dismissed on the

ground of invalid assumption of jurisdiction by the A.O for imposing penalty u/s.271(1)(c) of the Act, therefore, we refrain from adverting to and adjudicating the grounds raised by the department on the basis of which the order of the CIT(Appeals) to the extent he had allowed part relief to the assessee has been assailed by the department before us, and the same, thus, are left open.

17. Resultantly, the appeal filed by the assessee company in ITA No. 156/RPR/2014 for A.Y.2009-10 is allowed in terms of our aforesaid observations while for, the appeal filed by the department in ITA No.152/RPR/2014 is dismissed.

ITA No.163/RPR/2017 (Assessee's appeal)
A.Y.2010-11

18. We shall now take up the cross-appeals filed by the assessee and the department for A.Y.2010-11. The assessee company has assailed the impugned order passed by the CIT(Appeals) on the following grounds of appeal before us:

> "1(a). That on the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals) ["Ld. CIT(Appeals)"] vide its order dated 28 December 2016 erred in confirming 100% penalty levied in the order dated 30 January 2015 issued under section 271(1)(c) of the Act by Learned Assessing Officer ("Ld. AO") pursuant to certain additions made in the assessment order under section 143(3) of the Act dated 07 March 2013.

1(b). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in not discharging the onus of justifying that inaccurate particulars of income was furnished and the 'explanation' given by the Appellant is not 'bona fide' and thereby tax is sought to be evaded in the instant case.

1(c). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have failed to appreciate that the Ld. AO has not recorded any factual finding of falsity or bogus claims or furnishing of inaccurate particulars of income or concealment of income w.r.t. additions made by the Ld. AO, in absence of which, no penalty can be sustained.

2(a). That on the facts and in the circumstances of the case and without appreciating the fact that the claim of Rs.7027.06 lakhs "Land Compensation and Rehabilitation expenses" was based on a legal issue, and that the repeated claims could not be considered as 'inaccurate furnishing of particulars of income', the Ld. CIT(Appeals) have erred in confirming the order of the Ld. AO levying penalty on claim of expenses incurred towards "Land Compensation and Rehabilitation expenses".

2(b). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in confirming penalty, without appreciating the explanations offered by the Appellant for substantiating its claim with respect to 'points of law' and that the penalty levied under section 271(1)(c) of the Act can only be imposed for inadequate/mala-fide explanations offered by the Appellant with respect to 'facts' and not otherwise.

2(c) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) while upholding the penalty have erred in not considering the fact that the Appellant has filed an appeal before the Hon'ble High Court of Chhattisgarh with respect to the disallowance sustained by the Hon'ble Nagpur Income Tax Appellate Tribunal ("ITAT") in its own case in earlier years wherein the Hon'ble ITAT has itself held that the issue of whether the land compensation and rehabilitation expenses is revenue or capital in nature, is a debatable and legal issue.

2(d) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in not considering the fact that the appellant company is an undertaking of the Government itself and the directors do not have any share in profits of the company and therefore, it cannot reasonably be inferred that there was a mala fide intention for avoidance of tax.

3(a) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in upholding the penalty on claim of "provisions as per actuarial valuation made on workmen compensation of Rs.820.49 lakhs without appreciating the fact that the same was made on actuarial valuations and therefore, the liability for such provisions is an accrued liability and hence, an admissible expenditure.

3(b) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in sustaining the penalty on claim of "provisions as per actuarial valuation made on workmen compensation solely on the ground of inadmissibility of claims without appreciating that mere rejection of claim by the assessing officer would not tantamount to furnishing of inaccurate particulars of income leading to levy of penalty.

4(a). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in sustaining the penalty imposed by the Ld. AO on claim of depreciation of Rs.102.22 lakhs on Apollo Hospital building.

4(b). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in not appreciating the fact that Apollo Hospital was owned by the Appellant company and used for the treatment of the workman of the company, therefore the same does not tantamount to furnishing of inaccurate particulars of income leading to levy of penalty.

5. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in confirming the penalty imposed by the Ld. AO on claim of land revenue expenditure of Rs. 2.72 lakhs under the head miscellaneous expenditure.

6. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in confirming the penalty on account of addition of Rs.15.01 lakhs towards stores under the head prior period expenses without appreciating the fact that the same was crystalized in the previous year relevant to the assessment year under consideration.

7. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in holding that the penalty on TDS issues of should be referred by jurisdictional Ld. AO to the Assessing Officer of the TDS wing.

8(a). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in confirming the penalty imposed by the Ld. AO on account of addition of accumulated liquidated damages penalty of Rs.402.77 lakhs.

8(b). That on the facts and in the circumstances of the case and without appreciating the fact that the said claim was based on a legal issue and the same could not be considered as 'inaccurate furnishing of particulars of income', the Ld. CIT(Appeals) have erred in confirming the levy of penalty.

9. That the appellant craves leave to add, alter, amend, modify or rescind the grounds hereinabove either before or during the course of appellate proceedings."

Also the assessee has raised an additional ground of appeal before us on 13.09.2019, which reads as under :

Additional Ground :

12. That the Ld. AO erred in levying penalty under section 271(1)(c) read with section 274 of the Income Tax Act, 1961 without specifying whether it is for "concealment of Income" or for "furnishing of inaccurate particulars of income" in the show cause notice given and therefore, the impugned penalty order dated 30 January 2015 passed by him is bad in law, thus, deserves to be quashed."

On the other hand the revenue has assailed the order of the CIT(A) by raising the following grounds of appeal before us:

ITA No.143/RPR/2017 (Revenue's appeal)
A.Y. 2010-11

"1. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) of the Act by the A.O while disallowing expenses of Rs. 493.02 lakhs on account of expenses incurred on assets not belonging to assessee?

2. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) of the Act by the A.O while disallowing payment of Rs. 9933.04 lakhs made to coal transportation as the assessee company could not justify the rate at which transportation expenses are claimed by the companies run by the Ex-servicemen ?

3. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) of the Act by the A.O while disallowing expenses of Rs. 39,12,530/- u/s. 40(a)(ia) of the Act as assessee failed to make TDS on these payments?

4. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) of the Act by the A.O while disallowing prior period expenses of Rs. 41,42,000/- without appreciating the facts of the case that the assessee was not able to substantiate the claim with any evidence which could prove that there was any dispute and the dispute is settled in the present year?

5. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) was justified in deleting the penalty levied under proceedings u/s 271(1)(c) of the Act on the impugned addition on the issues, which have been already confirmed by the Ld. CIT(A) in the case of the quantum appeal against such additions?

6. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) was justified in ignoring the ratio of the case laws relied upon by the A.O while levying penalty on the additions on the various issues in this case?

7. Whether on the points of law and on facts and circumstances of the case, the Ld. CIT(A) has erred by giving a finding which is contrary to the evidence on the record, as the Ld. CIT(A) has accepted the submission of the assessee which is factually incorrect, thereby rendering the decision, which is perverse?

8. The order of the Ld. CIT(A) is erroneous both in law and on facts.
9. Any other ground that may be adduced at the time of hearing of appeal."

19. Succinctly stated, the assessee company had filed its original return of income for A.Y. 2010-11 on 03.10.2010, declaring an income

of Rs.2615.83 lacs (supra) under the normal provisions of the Act. The return of income filed by the assessee company was processed as such under Sec.143(1) of the Act on 30.06.2011. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec.143(2) of the Act.

20. Original assessment was thereafter framed by the A.O vide his order passed under Sec.143(3) of the Act, dated 07.03.2013, wherein the income of the assessee was assessed at Rs.3342.38 lacs (approx.) after, inter alia, making certain additions/disallowances, which after being scaled down by the CIT(A) remained as under :-

S. No.	Particulars	Amount (Rs.in lakhs)
1.	Disallowance of land compensation and rehabilitation expenses	7027.06
2.	Disallowance of expenditure on assets not belonging to the assessee company	493.02
3.	Disallowance of payment made to ESM transporters	9933.04
4.	Disallowance of assessee's claim for deduction of compensation paid to employees	820.49
5.	Disallowance of depreciation on apollo hospital building	102.22
6.	Disallowance of miscellaneous expenses	2.72
7.	Disallowance of prior period expenses	56.43

8.	Disallowance of expenses u/s.40(a)(ia)	39.12
9.	Disallowance of assessee's claim for deduction of LD penalty	402.77

21. The A.O while framing the assessment vide his order passed under Sec.143(3) of the Act, dated 07.03.2013 had also initiated penalty proceedings under Sec.271(1)(c) of the Act for furnishing of inaccurate particulars of income, and also without referring to any specific default as regards the impugned disallowances/additions made in the hands of the assessee company, which for the sake of ready reference are culled out as under:

S. No.	Particulars	Mention of limb for initiating penalty in quantum assessment order dated 07.03.2013 passed u/s.143(3) of the Act
1.	Disallowance of land compensation and rehabilitation expenses	For "furnishing inaccurate particulars of income"
2.	Disallowance of expenditure on assets not belonging to the assessee company	For "furnishing inaccurate particulars of income"
3.	Disallowance of payment made to ESM transporters	No specific limb has been invoked while initiating penalty proceedings (AO's remark in the assessment order-"penalty u/s.271(1)(c) of the Act is separately initiated"

4.	Disallowance of assessee's claim for deduction of compensation paid to employees	No specific limb has been invoked while initiating penalty proceedings (AO's remark in the assessment order-"penalty u/s.271(1)(c) of the Act is separately initiated"
5.	Disallowance of depreciation on apollo hospital building	
6.	Disallowance of miscellaneous expenses	For "furnishing inaccurate particulars of income"
7.	Disallowance of prior period expenses	
8.	Disallowance of expenses u/s.40(a)(ia)	For "furnishing inaccurate particulars of income"
9.	Disallowance of assessee's claim for deduction of LD penalty	No specific limb has been invoked while initiating penalty proceedings (AO's remark in the assessment order-"penalty u/s.271(1)(c) of the Act is separately initiated"

The A.O a/w. the assessment orders issued a "Show Cause" notice (SCN) u/s.274 r.w. Sec 271(1)(c) of the Act, dated 07.03.2013.

22. After the order passed by the CIT(A), dated 15.09.2014 disposing off the quantum appeal of the assessee, the A.O vide a SCN, dated 02.12.2014 called upon the assessee company to explain as to why penalty under Sec.271(1)(c) of the Act may not be imposed on it w.r.t. the additions/disallowances that were sustained by the CIT(A). As the reply filed by the assessee did not find favor with the A.O, therefore, he vide his order passed under Sec.271(1)(c) of the Act, dated

30.01.2015 saddled it with a penalty of Rs. 5663.06 lacs w.r.t the aforesaid additions/disallowances that were sustained/upheld by the CIT(Appeals), as under:

S. No.	Particulars	Mention of limb for levying penalty in penalty order dated 30.01.2015
1.	Disallowance of land compensation and rehabilitation expenses	For "furnishing of inaccurate particulars of income"
2.	Disallowance of expenditure on assets not belonging to the assessee company	For "concealment of income"
3.	Disallowance of payment made to ESM transporters	For "furnishing of inaccurate particulars of income"
4.	Disallowance of assessee's claim for deduction of compensation paid to employees	For "furnishing of inaccurate particulars of income"
5.	Disallowance of depreciation on apollo hospital building	For "furnishing of inaccurate particulars of income"
6.	Disallowance of miscellaneous expenses	For "furnishing of inaccurate particulars of income"
7.	Disallowance of prior period expenses	For "furnishing of inaccurate particulars of income"
8.	Disallowance of expenses u/s.40(a)(ia)	For "furnishing of inaccurate particulars of income"
9.	Disallowance of assessee's claim for deduction of LD penalty	For "furnishing of inaccurate particulars of income"

23. Aggrieved, the assessee assailed the order passed by the A.O under Sec.271(1)(c) of the Act, dated 30.01.2015 before the CIT(A), who partly sustained the order of the A.O, observing as under:-

> "**Decision for 2(a) & 2(b) & 2(c)-** This issue is having past litigation and my Ld. Predecessor had confirmed the addition made by the AO by observing the factual position. The factual position as narrated by my predecessor reads as under:
>
> The appellant company claimed expenditure representing payment made to State Government to acquire surface right as well as the right to possession in respect of lease hold land for a longer

period and for incurring expenditure pertaining to rehabilitation of people in course of obtaining the use of land for mining purposes as revenue expenditure. The AO observed that the appellant company claimed the expenditure as revenue in nature because the company has not become the owner of the land, but merely obtained the right to mine coal situated at that area. The appellant company preferred appeal before the CIT(Appeal), Bilaspur and Hon'ble ITAT, Nagpur Bench, Nagpur. The issue was decided in favour of the Revenue vide order of the Hon'ble Tribunal in ITA No. 18-22/Nag/2001 dated 28-02-2002. The appellant company has preferred appeal before the Hon'ble High Court of Chhattisgarh against the impugned order of Hon'ble Tribunal, which is pending for adjudication. However, the appellant company has been consistently claiming the expenditure as revenue in nature in the return of income filed up to the A.Y. 2009-10 and the AO has been denying the expenditure as inadmissible being capital in nature every year by placing reliance on the decision of the highest fact findings authority as well as in the ratio of the case in Sitalpur Sugar Works Vs. CIT reported in 49 ITR 160 (SC); International Airport Authority of India Vs. CIT reported in 254 ITR 657 (Del); Hardillia Chemicals Ltd Vs. CIT reported in 218 ITR 598 (Born); Jagmohan Rao Vs. CIT reported in 75 ITR 373 (SC). The order of the AO is being sustained by the First Appellate Authority by respectfully following the above decision of the jurisdictional Tribunal.

The Hon'ble Tribunal analyzed the claim on the basis of aim and object of the expenditure as well as resultant advantage to characterize whether the concerned expenditure is capital and revenue in nature by referring to decision of the Hon'ble Apex Court in the case of Bikaner Gypsums Ltd. Vs. CIT, the appellant company acquired the surface right from Government in terms of the lease agreement for using the said land for its surface operation for a long period of lease which itself is a long term period. After acquiring such surface right in respect of lease hold land, the appellant company acquires the right to possession of the said land from the villager who were occupying the said land, for this purpose, the appellant company spent the alleged sum for relocating and rehabilitating the said villagers. The Hon'ble Tribunal discussed case laws relied on by the appellant company like CIT Vs. R.J. Trivedi; Gotan Line Syndicate Vs. CIT; Madras Auto Services Limited Vs: CIT; Associated Cement Company Limited Vs. CIT and distinguished the ratio from the facts and circumstances of the case in hand. The Hon'ble Tribunal discussed the ratio of the case in Assam Bengal Cement Company Limited Vs. ell; N. Peer Saheb Vs. CIT; Chloride India Limited Vs CIT; Lucky Bharat Garage Vs. CIT; R.B. Seth Moolchand Sugandhchand Vs. CIT and finally concluded that the impugned expenditure incurred by the appellant company for acquiring surface right as well

as the right to possession in respect of lease hold land for engineering period is a capital expenditure and affirm the order of CIT(Appeals), Bilaspur confirming the addition made by the AO by treating the same as capital expenditure. The appellant company has preferred appeal against the impugned order of Hon'ble Tribunal before Hon'ble High Court of Chhattisgarh and it is pending for adjudication.

Regarding claim of "Land Compensation and Rehabilitation Expenses" as revenue expenditure, the Hon'ble Tribunal has held the expenditure as capital in nature. But, the appellant company has been consistently claiming it as revenue expenditure. Even after finality of the fact, continuity in incorrect claim in law for expenditure on land compensation and rehabilitation which has resultant effect of reducing the taxable income to that extent and thus, it amounts to giving inaccurate particulars of income in the return. The explanation offered by the appellant company is neither bonafide nor substantiated. Reliance is placed in the decision of A.M. Shah Vs. CIT 238 ITR 415 (Guj); CIT Vs. Smt. P.K. Kocharnmu Anna, Peroke 125 ITR 624; ACIT Vs. Khanna & Annadhnarn 142 TTJ 1 (Del) and it is held that penalty for furnishing such inaccurate particulars of expenses attracts penalty u/s 271(1)(c) of the Act.

The position of law emerging from the factual matrix of the case in Reliance Petro Products Pvt. Ltd Vs. CIT is that the addition made by the AO in respect of the interest claimed as a deduction u/s 36(1)(iii) of the Act was deleted by the CIT(A) because it had already been disallowed and added in earlier years and the assessee was under bonafide belief that on the payment basis it was allowable in later years. The Hon'ble Tribunal restored the issue to the file of the A.O. The appeal filed by the assessee against the order of the Tribunal was admitted by the High Court. It was, in these circumstances that the Hon'ble Apex Court concluded the assessee had neither concealed the income nor filed inaccurate particulars thereof: This, however, is not the factual position in the case in hand and the facts of the present case are clearly distinguishable. It is true that mere submitting a claim which is incorrect in law would not amount to giving inaccurate particulars of income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be bonafide. If the claim besides being incorrect in law is malafide, Explanation-1 to Section 271(1) come into plays and works to the disadvantage of the appellant company.

In the given facts and circumstances of the case and legal propositions, it is held that the explanation furnished by the appellant company justifying deduction on Land Compensation and Rehabilitation Expenses is not bona fide or substantiated and hence, presumption in Explanation-1 to section 271(1)(c) is attracted. The

penalty imposed against the addition is confirmed for furnishing inaccurate particulars of income in the return."

Decision for 3(a) & 3(b)- I have considered the rival submission. In the facts and circumstances of the case that the assessee has to construct the road as its head office is situated in the town and mines are situated far away. In the era of fast development, the population can not be stopped for using the road constructed by the company. Since the capital expenditure has been incurred by the assessee it academically it can be held that assessee can not be declare as owner of the road. In practice the land belongs to the State Government on which road has been constructed by the assessee and public at large can not be stopped for using such road and in view of this my learned predecessor had reduced the additions made by the AO up to 50%. Since this an estimate it can be held that the AO could not establish and quantify the concealment of income. In facts and circumstances of the case and the issue involves, I do not find A.O as justified in levying penalty. The penalty impose on this issue by the A.O is hereby cancelled."

Decision for 4(a) & 4(b) –

The 1st Appellate Authority had discussed the issue at length in this appellate order holding that in absence of complete and verifiable details, the A.O has to resort to some estimates for allowance/disallowance of a particular expenditure, which has also in the present case by the AO by disallowing 50% of the total expenses of Rs. 19866.08 lakhs i.e. Rs. 9933.04 lakhs. However, the addition was restricted to 50% i.e. Rs. 4966.52 lakhs.

After considering the explanation furnished by the appellant company, the AO imposed penalty under the aforesaid section for furnishing inaccurate particulars of income in the return and concealing its particulars of income by claiming wrong deduction.

Section 271(1)(c) of the Act provides for imposition of penalty in case the AO, in the course of any proceedings under the Act, is satisfied that any person has concealed particulars of his income or has furnished inaccurate particulars of such income. Explanation-1 to Sub section (1) to Section 271 of the Act provides that where in respect of any facts material to the computation of the total income of any person, such person fails to offer an explanation or offers an explanation which is found to be false or he offers an explanation, which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of its total income, have been disclosed by him, then the amount added or disallowed in computing

the total income of such person as a result thereof shall, - for the purpose of clause (c), be deemed to represent the income in respect of which particulars have been concealed. Thus, in the case of failure of the assessee to offer any explanation or explanation furnished by him being found false, penalty may be imposed on him. However, if the assessee offers an explanation, mere failure on his part to substantiate it will not be enough to warrant penalty, if the explanation is bona fide, and all the facts relating to the same were disclosed by him in the return. Explanation-1 to Section 271(1)(c) would be inapplicable in respect of any amount added or disallowed as a result of rejection of the explanation furnished by the assessee, provided that his explanation is shown to be bona fide and all the facts relating to the same and material to the computation of total income was disclosed by him. The position of law, thus emerges is that so long as the assessee has not concealed any material fact, or the factual information given by him has not been found to be incorrect, he will not be liable to imposition of penalty u/s 271(1)(c) of the Act, even if the claim made by him is unsustainable in law, provided that the either substantiated explanation offered by him or the explanation offered by him, even if not substantiated, is found to be bona fide. In other words, if the explanation is neither substantiated nor shown to be bona fide, Explanation-1 to Section 271(1)(c) would come into play and the assessee will be liable to penalty leviable u/s 271(1)(c) of the Act in respect of the additions or disallowances made by the AO in the assessment.

The expression used in clause (c) is "has concealed the particulars of his income" or "furnished inaccurate particulars of such income". Therefore, both in cases of concealment and inaccuracy, the phrase "particulars of income" is used. It will be noted that as regards concealment the expression in clause (c) is "has concealed the particulars of his income" and not "has concealed his income". It is obvious that the penal provisions would operate when there is a failure of duty, to disclose fully and truly particulars of income, imposed under the Act and the Rules there under. The duty is enjoined upon a person to make a correct and complete disclosure of his income and it is only when he fails in his duty by not disclosing his income or part thereof, he conceals the particulars of his income. The duty is enjoined upon him to make a complete disclosure of his income as Well as a correct disclosure. Therefore, if the disclosure made of the particulars of income is incorrect, then also be commits breach of his duty. Such defaults entail the penal consequences contemplated by s. 271(1)(c)(iii) of the Act.

Under s. 139(1) of the Act, it is inter alia provided that every person, if his total income in respect of which he is assessable under the Act during the previous year, exceeded the maximum amount

which was not chargeable to income-tax, shall furnish a return of his income in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed. It is, therefore, obligatory on a person whose total income exceed the maximum amount which was not chargeable to income tax, to furnish a return of his income during the 'previous year', in the prescribed form. Such return is required to be verified in the prescribed manner. Not only is he obliged to furnish return of his income, meaning thereby to disclose fully and truly all his income, but he is also required to set forth 'other particulars' as may be prescribed. The word 'prescribed' as defined by s. 2(33) of the Act means, 'prescribed by the Rules under the Act'. The forms are accordingly prescribed by the Rules framed under the Act. Section 140 of the Act lays down as to by whom such return can be signed and verified.

It will, thus, be seen that the form of return of income included a variety of particulars to be disclosed and the particulars of income to be disclosed can be seen against the items which related to disclosure of income besides particulars other than those which related to the income of the assessee, such as his name, address, status etc. The forms of returns are obviously prepared in the context of the duty of a person to disclose his income from various sources under various heads of income as statutorily provided and his duty to disclose his total income in the return. The extent of his total income will determine the total income-tax liability of a person. "Total income" is defined in s. 2(45) of the Act and it means the total amount of income computed in the manner laid down in the Act. Thus, for arriving at the total income, the income derived from all sources is to be considered as provided by section 5, when it is received or deemed to be received by a person. All income for the purpose of charge of income-tax and computation of total income is required to be classified under distinct heads of income such as salaries, income from house property, profits and gains of business or profession, capital gains and income from other sources.

Thus, under each head of income, there' are provisions for deductions which are to be made while computing the income chargeable under that head. It, therefore, follows that it is an obligatory duty cast upon a person filing the return of income to disclose all his income derived from any source under various heads and indicate the income under each head, which is chargeable to income-tax, after making the permissible deductions. Disclosure of income would be disclosure of particulars of income, which a person is duty-bound to disclose in fulfilment of his statutory obligations to pay tax on the income chargeable to tax.

It is in the background of discharge of these statutory obligations of an assessee to fully and truly disclose his income under various heads and indicate the income under those heads which is chargeable to income-tax after making permissible deductions, applicability of provisions of section 271(1)(c) is to be viewed. If a person obliged to furnish the particulars of his income, omits to furnish them, he thereby conceals the particulars. This concealment may take various forms like non-disclosure of particular head of income. The obligation is not only to disclose particulars of income but to disclose them correctly and completely. If, while disclosing the particulars of income in the return, he puts them under a wrong head, he can be said to be furnishing inaccurate particulars of income. The particulars of income can be made inaccurate in variety of ways, a glaring illustration of which would be where the assessee, while stating the income under a particular head, works out the income chargeable to tax after making deductions which are falsely made. Such a process would make the particulars of income inaccurate. In such cases, whether the income is not disclosed against the constituent item of the return in which it falls or is partly not disclosed, or the particulars of income given in the return are incorrectly stated by any machination, the impact is bound to be on the figure of gross total income to be mentioned under various heads of income and also on the total income chargeable to tax. In fact, reducing the figure of income that would be chargeable to tax would be the purpose of concealment of particulars of income or giving inaccurate particulars of income. The expression "particulars of income" would have relevance to all the particulars of income which the assessee is required to give in his return fully and truly including the particulars of income chargeable to tax under various heads and the total income. Therefore, any concealment or inaccuracy in the particulars of income in the return occurring at any stage up to and inclusive of the ultimate stage of working out of total income would attract the penalty provision of s. 271(1)(c) of the Act. Every figure in the return which is set opposite to the item of income is a particular of income, whether the figure is one which is stated independently of anything else that appears in the return or the documents accompanying it or whether it is something derived from other figures elsewhere stated in such return or documents. False result may be produced by the falsity of one or more of the constituent items in the return. The words inaccurate particulars would cover falsity in the final figure as also the constituent elements or items. They simply would mean inaccurate in some specific or definite respect whether in the constituent or subordinate-items -of income or the end result. [Relied on A.M. Shah Vs. CIT 238 1TR 415 (Guj)].

The appellant company has preferred appeal before the Hon'ble Tribunal against the order of CIT(Appeals), Bilaspur confirming the

additions partially, but there is no specific request from its side to keep the penalty proceedings against the impugned penalty order pending till disposal of the quantum appeal before the Hon'ble Tribunal. However, the reasons for addition were the failure on the part of the company to furnish details of expenses with proper evidence and though the additions are confirmed partially by the 1st Appellate Authority, I respectfully follow the decision of my learned predecessor in cases of earlier years who held that there is neither the element of concealment of income nor any inaccurate particulars of income furnished in the return by the assessee and The AO has not brought out any falsity or bogus claim of expenditure incorporated under the above heads of expenses. Therefore, it is found that the submission of the Ld. AR is acceptable and hence, no penalty under the aforesaid section is imposable against such addition. Thus the penalty imposed by the learned AO in the issue of payments made to the ESM by the company is not for business purpose is hereby cancelled."

Decision for 5(a) & 5(b)- The issue has been discussed by the AO in para 4.4 of his penalty order and since the addition had been confirmed by the first appellate authority following his worthy predecessor after thoroughly distinguishing the decisions cited by the learned AR. The AO held that the assessee is creating provisions as per actuarial valuations against various head of expenses. The assessee is doing as per AO as is being done by Coal India Ltd., the holding company. During penalty proceedings the learned AR could not substantiate the provision made by the company and the basis to reach at the actuarial valuation. Since this is a self made procedure adopted by the assessee which has no basis and also no past history of such valuation the additions had been confirmed during appellate proceedings. The issue whether it is equal to filing inaccurate particulars of income or not depends on the basis of valuation itself which could not be explained by and substantiated by the learned AR of the assessee. During appellate proceeding also there was no effort made by the company to so the basis for valuation to 'reach at actuarial valuation. I do not find any infirmity in the satisfaction of the AO for imposition of penalty on this issue, thus to this extent the penalty is ,confirmed and the ground of appeal is dismissed.

Decision for 6(a) & 6(b)- The .AO has discussed the issue in para 4.5 of his penalty order. It is a fact that Hospital is run in a building which may be called as House Property. The man power is required to the run the Hospital in the form of Doctors and Paramedical Staff. The assessee has claimed that the Hospital Building attracts depreciation. In the quantum appeal it had been held that it is only house property income because the assessee is deemed owner of the building and business of the assessee is the mining and trading of the coal and not

to run the hospital. Since there is no nexus between runnings of hospital for the public, mere referential treatment of the employees of the company if entertained by the hospital named as Apollo Hospital, the assessee can not slip in the shoes of the persons who are technically qualified for running the hospital. The claim of depreciation certainly equates with filing of inaccurate particular of income. The penalty imposed by the AO on this amount is hereby confirmed. The ground of appeal is dismissed.

Decision for 7(a) & 7(b)- I have carefully considered the arguments of the learned AR and 'I at of considered view that payment of land revenue by a mining company can not be imagined as its revenue expenditure for purchasing of immovable property, hence I do not find any infirmity in the satisfaction of the AO to impose penalty for this amount of Rs. 2,72,613/-.

Decision for 8(a) & 8(b)- The has discussed the issue in para 4.7 of his assessment order and my learned predecessor on the basis of section 211 of Companies Act read with part II of schedule VI requiring the assessee to book only that much income or expenses which reflect the result of working of company for the period covered by the accounts. The assessee had debited the prior period expenditure and relying on the facts that prior period expenditure can not be booked. So far as the revision of wages is concern I do not agree with the findings of learned-AO-for Rs. 41,42,000/- amounts to the concealment because it had been accepted by the management under NCWA. Thus the penalty imposed by the AO on account 41,42,000/- is hereby cancelled and remaining amount of this penalty imposed by the AO is confirmed. The ground of appeal is partly allowed in this ground.

Decision for 9(a) & 9(b)- The assessing officer has imposed penalty for claiming TDS. The fact is that assessee had not disclosed the income but claimed TDS on the ground that such income has been reversed. In my considered view Rule 37BA is clear about giving credit to the TDS but the AO is not empowered to impose penalty for bogus claim of TDS because he does not have jurisdiction of the matter of TDS issues. The penalty is cancelled on this issue but the AO has to be freed by the appellate authority to refer the issue to the TDS wing so as the suitable action be taken by the AO of TDS wing.

Decision for 10(a) & 10(b)- The AO has discussed the issue in para 4.9 of his 'assessment order. The issue had been decided by my worthy predecessor who held the LD penalty as receipt of capital in nature because assessee could not furnish the details for delay in supply of machineries. Since the amount has been treated as capital in nature for failure during appellate proceedings even substantiating the claim, I find no infirmity in the order of the AO on this issue the

> penalty imposed by the AO on this account is hereby confirmed and the ground of appeal is dismissed."

24. The assessee being aggrieved with the order of the CIT(Appeals) who had sustained the penalty imposed by the Assessing Officer u/s 271(1)(c) of the I.T Act has carried the matter in appeal before us. It was submitted by the ld. A.R that the A.O had issued two "Show cause" notices (SCN's) to the assessee under Sec. 274 r.w.s 271(1)(c) of the Act, dated 07.03.2013, Annexure-5 of the assessee's compilation and dated 02.12.2014, Anneure-6 of the assessee's compilation. It was the claim of the ld. A.R that as the Assessing Officer had failed to strike-off the irrelevant default in both the "Show Cause" notices (herein referred to as 'SCN's) issued u/s 274 r.w.s 271 of the Act, dated 07.03.2013 (supra) and dated 02.12.2014 (supra), therefore, the penalty thereafter imposed by him u/s 271(1)(c) of the I.T. Act cannot be sustained and is liable to be vacated. The ld. AR in order to drive home his aforesaid claim had drawn our attention to both of the aforesaid SCN's, i.e dated 07.03.2013 and 02.12.2014. Referring to the aforesaid discrepancy in the SCN's, dated 07.03.2013 and 02.12.2014, it was submitted by the ld. AR that as the AO had failed to validly put the assessee company to notice as regards the specific default for which the impugned penalty under Sec. 274 r.w.s 271(1)(c)

was sought to be imposed on it, therefore, the assessee company had remained divested of an opportunity to put forth in its defense a clear explanation that no such penalty u/s 271(1)(c) was called for in its case. The ld. AR in support of his aforesaid contention had relied on a host of judicial pronouncements, as under:

(i). CIT Vs. Manjunatha Cotton & Ginning Factory
(2013) 35 taxmann.com 250 (Karnataka)

(ii). Mohd. Farhan A. Shaikh Vs. PCIT
(2021) 434 ITR 1 (Bombay)(FB)

(iii). CIT Vs. Samson Perinchery
(2007) 392 ITR 4 (Bombay)

(iv). Pr. CIT (Central) Vs. Golden Peace Hotels and Resorts (P) Ltd.
(2021) 124 tamnn.com 249 (SC)

(v). PCIT Vs. Goa Coastal Resorts and Recreation (P) Ltd.
(2021) 130 taxmann.com 379 (SC)

(vi). Dilip N. Shroff Vs. JCIT
(2007) 161 Taxman 218 (SC).

25. Per contra, the Ld. Departmental Representative (for short 'D.R') relied upon the orders of the lower authorities. It was submitted by the Ld. D.R that as the assessee company was afforded sufficient opportunity by the A.O in the course of penalty proceedings, thus, it was incorrect on its part to claim that no opportunity of being heard

was afforded to it. It was submitted by the ld. D.R that now when the assessee in compliance to the SCN, dated 07.03.2013 r.w SCN, dated 02.12.2014 had come forth with an explanation that no penalty u/s 271(1)(c) of the Act was called for in its hands, therefore, it was beyond comprehension that as to on what basis it was claiming that it was not validly put to notice about the specific default for which penalty u/s 271(1)(c) of the Act was sought to be imposed on it.

26. We have heard the ld. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

27. Admittedly, on a perusal of the SCN, dated 07.03.2013, it stands revealed that the Assessing Officer had failed to strike-off the irrelevant default while calling upon the assessee to explain that as to why it may not be subjected to penalty u/s 271(1)(c) of the Act. For the sake of clarity, the SCN, dated 07.03.2013 (as per Annexure 5 of assessee's compilation dated 13.03.2019) is culled out as under:

Annexure 5 I.T.N.S.-29

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Joint Commissioner of Income-tax,
Range-I, Bilaspur

PAN:-AADCS2066E
To,

Dated: **07/03/2013**

M/S SOUTH EASTERN COALFIELD LTD.
SEEPAT ROAD,
BILASPUR,(C.G.)

Whereas in the course of proceedings before me for the assessment year 2010-11. It appears to me that you:-

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under Section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961, No ..... dated ..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under Section 142(1)/1 143(2) of the Income-tax Act, 1961.
No. ..... dated .....

***have concealed the particulars of your Income or furnished inaccurate particulars of such Income.**

You are hereby requested to appear before me at **11:30 A.M./P.M.** on **22/03/2013** and show cause why an order imposing a penalty on you should not be made under Section 271 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 show cause in writing on or before the said date which will be considered before any such order is made under Section 271(1)(c).

Assessing Officer
(Debasish Lahiri)
Jt. Commissioner of Income Tax
Range-I, Bilaspur (C.G.)

Office of Joint Commissioner of Income Tax * Range-1, Bilaspur *

Read
07/03/2013

Further, the aforesaid SCN, dated 07.03.2013 (supra) was thereafter followed by another SCN, dated 02.12.2014. However, in the SCN,

dated 02.12.2014 also the A.O had failed to point out the specific default for which the assessee company was called upon to explain as to why it may not be saddled with penalty u/s 271(1)(c) of the Act. Once again, for the sake of clarity, the SCN dated 02.12.2014 (as per Annexure 6 of the asssessee's compilation dated 13.03.2019) is culled out as under:

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Deputy Commissioner of Income-tax,
Circle-1(1), Mahima Commercial Complex,
Vyapar Vihar, Bilaspur

PAN:- AADCS2066E

To.

Dated: **02/12/2014**

M/s South Eastern Coalfields Ltd.,
Seepat Road,
Bilaspur (CG)

Whereas in the course of proceedings before me for the assessment year 2010-11. It appears to me that you:-

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under Section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961, No ..... dated ..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under Section 142(1)/1 143(2) of the Income-tax Act, 1961.
No. ..... dated .....

***have concealed the particulars of your Income or furnished inaccurate particulars of such Income.**

You are hereby requested to appear before me at **11:30 A.M.** on **15/12/2014** and show cause why an order imposing a penalty on you should not be made under Section 271 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 show cause in writing on or before the said date which will be considered before any such order is made under Section 271(1)(c).

(Seal)

Dy. Commissioner of Income Tax Circle-1(1), Bilaspur (C.G.)

Assessing Officer
(Rituparn Namdeo)
Dy. Commissioner of Income Tax
Circle 1(1), Bilaspur

28. As such the aforesaid failure to point out the specific default for which penalty u/s.271(1)(c) was sought to be imposed, viz. "concealment of the particulars of income" or "furnishing of inaccurate particulars of income" was allowed by the A.O to perpetuate in the SCN, dated 02.12.2014 (supra). Insofar the validity of the jurisdiction assumed by the A.O for imposing penalty u/s 271(1)(c) is concerned, we find that the same has been assailed before us on the ground that as the irrelevant default in the aforesaid SCN's dated 07.03.2013 and 02.12.2014 was not struck off by the A.O, therefore, the assessee was not validly put to notice as regards the default for which it was called upon to explain that as to why penalty may not be imposed on it under Sec. 271(1)(c) of the I.T Act.

29. We have given a thoughtful consideration to the facts of the case, and are persuaded to subscribe to the claim of the Ld. AR that the A.O had in both the aforesaid SCN's dated 07.03.2013 and 02.12.2014 failed to point out the specific default for which penalty was sought to be imposed on the assessee company. In our considered view, as both of the two defaults envisaged in Sec. 271(1)(c), i.e 'concealment of income' and 'furnishing of inaccurate particulars of income' are separate and distinct defaults which operate in their respective

independent and exclusive fields, therefore, it was obligatory for the A.O to have clearly put the assessee company to notice as regards the specific default for which it was being called upon to explain that as to why penalty under Sec. 271(1)(c) may not be imposed on it. As observed by us hereinabove, a perusal of the SCN's issued in the present case by the A.O under Sec. 274 r.w. Sec. 271(1)(c), dated 07.03.2013 and 02.12.2014 clearly reveal that there was no application of mind by the A.O while issuing the same. We are of a strong conviction that the very purpose of affording a reasonable opportunity of being heard to an assessee as per the mandate of Sec. 274(1) of the Act would not only be frustrated, but in fact would be rendered as redundant if the assessee is not conveyed in clear terms the specific default for which penalty under the said statutory provision is sought to be imposed on him. In our considered view, the indispensable requirement on the part of the A.O to put the assessee to notice as regards the specific charge contemplated under the aforesaid statutory provision, viz. 'concealment of income' or 'furnishing of inaccurate particulars of income' is not merely an idle formality but is a statutory obligation cast upon him, which we find

had not been discharged in the present case as per the mandate of law.

30. As we have while disposing off the appeal of the assessee for A.Y.2009-10 in ITA No.156/RPR/2014 dealt with at length on the validity of the jurisdiction assumed by the A.O for imposing penalty u/s.271(1)(c) of the Act on an assessee without pointing out in the "show cause" notice (SCN) issued u/s.274 r.w.s. 271(1)(c) of the Act the specific default for which penalty was sought to be imposed in its case, therefore, the view therein taken by us will apply *mutatis mutandis* for disposing off the present appeal of the assessee for A.Y.2010-11 in ITA No.163/RPR/2017. Therefore, in the backdrop of our aforesaid observations, as the A.O in the present case also had imposed penalty u/s.271(1)(c) without pointing out in the SCN's dated 07.03.2013 and 02.12.2014 the specific default for which the penalty was sought to be imposed, thus, the penalty of Rs.5663.06 lac (approx.) is on the same terms and reasoning vacated.

31. That as we have while disposing off the appeal filed by the assessee company in ITA No.163/RPR/2017 had held that the A.O had wrongly assumed jurisdiction u/s.271(1)(c) of the Act, therefore, borrowing the said reasoning and basis the appeal filed by the revenue

in ITA No.143/RPR/2017 in absence of valid assumption of jurisdiction by the A.O u/s.271(1)(c) of the Act is on the same terms dismissed. As the appeal filed by the department is dismissed on the ground of invalid assumption of jurisdiction by the A.O for imposing penalty u/s.271(1)(c) of the Act, therefore, we refrain from adverting to and adjudicating the grounds raised by the department on the basis of which the order of the CIT(Appeals) to the extent he had allowed part relief to the assessee has been assailed by the department before us, and thus, the same are left open.

32. Resultantly, the appeal filed by the assessee company in ITA No.163/RPR/2017 for A.Y. 2010-11 is allowed in terms of our aforesaid observations while for, the appeal filed by the department in ITA No.143/RPR/2017 for A.Y.2010-11 is dismissed.

ITA No.66/RPR/2021 (Assessee's appeal)
A.Y.2010-11

33. We shall now take up the appeal filed by the assessee against the order passed by the CIT(Appeals), dated 27.07.2021, wherein the latter had upheld the penalty imposed by the A.O u/s.271(1)(c) of the Act as regards the disallowance by the A.O of the assessee's claim for deduction of additional depreciation on the transport vehicles vide his

order passed u/s.143(3) r.w.s. 147 of the Act, dated 30.07.2015. The assessee has assailed the impugned order on the following grounds of appeal before us:

> "1. That, on the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ['Ld. CIT(A), NFAC] vide his order dated 27 July 2021 has erred in confirming the penalty levy on claim of additional depreciation on heavy earth moving machinery, levied by the Learned Joint Commissioner of Income Tax (OSD), Circle-1(1), Bilaspur (learned Assessing Officer') pursuant to disallowances made in the reassessment order dated 30 July 2015 issued under section 147 read with 143(3) of the Act.
>
> 2. That, on the facts and in the circumstances of case and in law, the Learned AO erred in initiating penalty proceeding vide notice dated 30 July 2015 without specifying whether it is for concealment of income or furnishing inaccurate particulars of income.
>
> 3 That, on the facts and in the circumstances of the case and in law, impugned penalty order dated 02 February 2018 passed by the Ld. Assessing Officer levying penalty under section 271(1)(c) of the Act is bad and law and liable to be quashed.
>
> 4 That, on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC has erred in confirming the penalty levy on claim of additional depreciation on heavy earth moving machinery, merely on the ground the claim has been considered to be inadmissible by the AO, without appreciating that mere rejection of claim by the assessing officer does not by itself lead to the inference that the Assessee had furnished inaccurate particulars.
>
> 5. That, on the facts and in the circumstances of the case, and in law, the learned AO has erred in levying penalty on additions made on a legal issue.
>
> 6. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in considering 240 Tones Dumper/Caterpillar as ineligible for additional depreciation without appreciating that these are heavy earth moving/chain mounted vehicles and not road transport vehicles as prohibited under section 32(1)(iia) of the Act, and thereby holding that the Appellant has furnished inaccurate particulars.

> 7. That on the facts and in the circumstances of the case, the Ld. AO has erred in invoking penalty for inaccurate particulars in cases where two views are possible and assessee has taken one of the possible view which is also supported by several judicial precedents.
>
> 8. That the appellant craves leave to add and for alter, amend, modify or rescind the grounds hereinabove before or at the hearing of this appeal."

34. Succinctly stated, the assessee which is a public limited company and a subsidiary of Coal India Limited is engaged in the activities related to development of mines and extraction of coal from various mines under its control and earns income from sale of coal. Original assessment was framed in the case of the assessee company vide order passed by the A.O. u/s.143(3) of the Act, dated 07.03.2013, determining its income at Rs.3342.38 lac (approx.). On appeal, the CIT(A) vide his order dated 15.04.2014 partly allowed the appeal and scaled down the assessed income to Rs.2804.60 lac (approx.). Thereafter, the case of the assessee was reopened by the A.O u/s.147 of the Act. The reasons to believe forming the very basis for reopening of the concluded assessment of the assessee company reads as under:

> " Perusal of the audited account reveals that as per Schedule-5 assessee company has claimed additional depreciation of Rs.5801.06 lakhs on plant & machinery. On going through the case record it is seen that assessee company has made addition of Rs.48285.90 lakhs in the block of plant & machinery details list of which was provided during the course of assessment. From this list it is evident that assessee company has claimed additional depreciation on Catterpillar, 240 T Dumper, Dumper, 240 Tonne Dumper etc.

> Whereas as per provisions of section 32(iia) in this regard speaks as under:-
> In the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March 2005, by an assessee engaged in the business of manufacture or production of any article or thing for in the business of generation or generation and distribution of power], a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii):
>
> Provided that no deduction shall he allowed in respect of—
>
> (A) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or
>
> (B) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house; or
>
> **(C) <u>any office appliances or road transport vehicles; or</u>**
>
> (D) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year,
>
> in view of the above provision, assessee is not entitled for claim of Rs. 1196.56 lakhs on account of additional deprecation on road transport vehicles. Thus, I have reason to believe that the income chargeable to tax on the account of Rs.1196.56 lakhs has escaped assessment within the meaning of provision of section of 147 of the I. T. Act, 1961. To assess the escaped income, notice u/s 148 is required to be issued"

Assessment u/s.143(3) r.w.s. 147 of the Act, dated 30.07.2015 was thereafter framed, wherein after disallowing the assessee's claim for additional depreciation on road transport vehicles of Rs.1196.56 lac (approx.), the income of the assessee company was re-assessed at Rs.2816.57 lacs (approx.)

35. The A.O while framing the reassessment vide his order passed u/s.143(3) r.w.s. 147 of the Act dated 30.07.2015 had also initiated penalty proceedings u/s.271(1)(c) of the Act for furnishing of inaccurate particulars of income as regards the assessee's claim of additional depreciation on transport vehicles that was disallowed while framing the reassessment. Also, the A.O a/w. the reassessment order issued a "Show cause" notice (SCN), dated 30.07.2015 u/s.274 r.w.s. 271(1)(c) of the Act.

36. After the order passed by the CIT(Appeals), Bilaspur dated 23.12.2016 disposing off the quantum appeal of the assessee, wherein the disallowance of the assessee's claim for additional deprecation on transport vehicles was affirmed, the A.O vide a SCN, dated 16.01.2018 called upon the assessee company to explain that as to why penalty under Sec.271(1)(c) of the Act may not be imposed on it w.r.t. the disallowance of its claim for additional depreciation on transport vehicles that was sustained by the CIT(A). As the reply filed by the assessee did not find favor with the A.O, therefore, he vide his order passed under Sec.271(1)(c) of the Act, dated 02.02.2018 saddled it with a penalty of Rs. 358.96 lacs (approx.) for furnishing of inaccurate

particulars of income w.r.t the disallowance of its claim for additional depreciation on transport vehicles that was sustained/upheld by the CIT(Appeals).

37. Aggrieved, the assessee assailed the order passed by the A.O under Sec.271(1)(c) of the Act, dated 19.02.2013 before the CIT(A) but without any success. The CIT(Appeals) while approving the order passed by the A.O u/s.271(1)(c) of the Act, had observed as under :-

> "4.6. Appellant's submissions were carefully considered. Appellant's submission that the notice issued by the Assessing Officer was invalid since it did not indicate the specific limb under section 271(1)(c), as to whether the penalty was initiated for concealment of income or for furnishing inaccurate particulars of income, cannot be accepted. There are contradicting decisions by various courts on this issue. In the case of [2018] 93 taxmann.com 250 (Madras) HIGH COURT OF MADRAS, Sundaram Finance Ltd. v. Assistant Commissioner of Income-tax, Co. Circle VI(4), Chennai, it was held as under:
>
> > "15. Before us, the assessee seeks to contend that the notices issued under Section 274 r/w. Section 271 of the Act are vitiated since it did not specifically state the grounds mentioned in Section 271(1)(c) of the Act.
> >
> > 16. We have perused the notices and we find that the relevant columns have been marked, more particularly, when the case against the assessee is that they have concealed particulars of income and furnished inaccurate particulars of income. Therefore, the contention raised by the assessee is liable to be rejected on facts. That apart, this issue can never be a question of law in the assessee's case, as it is purely a question of fact. Apart from that, the assessee had at no earlier point of time raised the plea that on account of a defect in the notice, they were put to prejudice. All violations will not result in nullifying the orders passed by statutory authorities. If the case of the assessee is that they have been put to prejudice and principles of natural justice were violated on account of not being able to submit an effective reply, it would be a different matter. This was never the plea of the assessee either before the Assessing

> Officer or before the first Appellate Authority or before the Tribunal or before this Court when the Tax Case Appeals were filed and it was only after 10 years, when the appeals were listed for final hearing, this issue is sought to be raised. Thus on facts, we could safely conclude that even assuming that there was defect in the notice, it had caused no prejudice to the assessee and the assessee clearly understood what was the purport and import of notice issued under Section 274 r/w, Section 271 of the Act. Therefore, principles of natural justice cannot be read in abstract and the assessee, being a limited company, having wide network in various financial services, should definitely be precluded from raising such a plea at this belated stage.
>
> 17. Thus, for the above reasons, Substantial Questions of law Nos. 1 and 2 are answered against the assessee and in favour of the revenue. The additional substantial question of law, which was framed is rejected on the ground that on facts the said question does not arise for consideration as well as for the reasons set out by us in the preceding paragraphs."

4.7 In the present case also it is found that this issue was not raised by the appellant before the Assessing Officer. Hence, it is not correct on the part of the appellant to raise the issue before the appellate authority. With due respects to the jurisdictional ITAT, it is pertinent to mention here that the decision of the Madras High Court in the case of Sundaram Finance Ltd (supra) was not brought to the notice of the Tribunal. It is also pertinent to mention here that the SLP tiled against the decision of the Hon'able Madras High Court was dismissed by the Hon'able Supreme Court [2018] 99 taxmann.com 152 (SC), Sundaram Finance Ltd. v. DCIT. In view of the above, the appellant's plea that the levy of penalty should be deleted since the notice was defective, cannot be accepted.

4.8 Appellant submitted that a mere making of a claim, which may not be sustainable in law, by itself, would not amount to furnishing inaccurate particulars regarding the income of the appellant. Appellant submitted that the issue is pending in appeal before High Court/double in respect of those grounds/ issues and pending adjudication. In this backdrop, AO was not correct in levying the penalty under section 271(1)(c). These submissions by the appellant are not acceptable.

4.9 The claim made by the appellant was in violation of the principles of the Law. Appellant very well knew that a vehicle cannot be equated with the plant and machinery. The law expressly prohibited a road transport vehicle from the claim of additional depreciation. Knowing

> that the items namely Caterpillar, 240 Te Dumpers would not fall into the category of machinery, appellant made a claim of additional depreciation on these items. The Assessing Officer had rightly disallowed the claim and the same was rightly upheld by the CIT(A). In this backdrop, the Assessing Officer is fully empowered to levy the penalty under section 271(1)(c).
>
> 4.10 The decisions cited by the appellant were based on different set of facts. In all those decisions, it was held by the courts that the assessee had disclosed all the material facts and it did not furnish any inaccurate particulars of its income. However in the present case, it cannot be held so. By claiming additional depreciation on vehicles, and classifying the vehicles as plant and machinery, appellant had indeed furnished inaccurate particulars. In view of the above, the penalty levied by the Assessing Officer is confirmed. The appeal on this ground is dismissed."

38. The assessee being aggrieved with the upholding of the penalty u/s.271(1)(c) of the Act by the CIT(Appeals) has carried the matter in appeal before us. It was submitted by the ld. A.R that the A.O had issued two "Show cause" notices (SCN) to the assessee company under Sec. 274 r.w.s 271(1)(c) of the Act, dated 30.07.2015, Annexure-7 of the assessee's compilation dated 13.03.2019 and dated 16.01.2018, Anneure-8 of the assessee's compilation dated 13.03.2019. It was the claim of the ld. A.R that as the Assessing Officer had failed to strike-off the irrelevant default in both the "Show Cause" notices (herein referred to as 'SCN's) issued u/s 274 r.w.s 271 of the Act, dated 30.07.2015 (supra) and dated 16.01.2018 (supra), therefore, the penalty thereafter imposed by him u/s 271(1)(c) of the I.T. Act for furnishing of inaccurate particulars of income cannot be sustained

and is liable to be vacated. The ld. AR in order to drive home his aforesaid claim had drawn our attention to both of the aforesaid SCN's, i.e dated 30.07.2015 and 16.01.2018. Referring to the aforesaid discrepancy in the SCN's, dated 30.07.2015 and 16.01.2018, it was submitted by the ld. AR that as the AO had failed to validly put the assessee company to notice as regards the specific default for which the impugned penalty under Sec. 274 r.w.s 271(1)(c) was sought to be imposed on it, therefore, the latter had remained divested of an opportunity to put forth in its defense a clear explanation that no such penalty was called for in its case. The ld. AR in support of his aforesaid contention had relied on a host of judicial pronouncements, as under:

(i). CIT Vs. Manjunatha Cotton & Ginning Factory
(2013) 35 taxmann.com 250 (Karnataka)

(ii). Mohd. Farhan A. Shaikh Vs. PCIT
(2021) 434 ITR 1 (Bombay)(FB)

(iii). CIT Vs. Samson Perinchery
(2007) 392 ITR 4 (Bombay)

(iv). Pr. CIT (Central) Vs. Golden Peace Hotels and Resorts (P) Ltd.
(2021) 124 tamnn.com 249 (SC)

(v). PCIT Vs. Goa Coastal Resorts and Recreation (P) Ltd.
(2021) 130 taxmann.com 379 (SC)

(vi). Dilip N. Shroff Vs. JCIT

(2007) 161 Taxman 218 (SC).

39. Per contra, the Ld. Departmental Representative (for short 'D.R') relied upon the orders of the lower authorities. It was submitted by the Ld. D.R that as the assessee company was afforded sufficient opportunity by the A.O in the course of penalty proceedings, thus, it was incorrect on its part to claim that no opportunity of being heard was afforded to it. It was submitted by the ld. D.R that now when the assessee in compliance to the SCN, dated 30.07.2015 r.w SCN, dated 16.01.2018 had in the course of penalty proceedings come forth with an explanation vide its reply dated 25.11.2018 that no penalty u/s 271(1)(c) of the Act was called for in its hands, therefore, it was beyond comprehension that as to on what basis it could thereafter claim that it was not validly put to notice about the default for which penalty u/s 271(1)(c) of the Act was sought to be imposed on it.

40. We have heard the ld. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Admittedly, on a perusal of the SCN, dated 30.07.2015, it stands revealed that the Assessing Officer had failed to

strike-off the irrelevant default while calling upon the assessee company to explain that as to why it may not be subjected to penalty u/s 271(1)(c) of the Act. It may be observed, that the aforesaid SCN, dated 30.07.2015 (supra) was thereafter followed by another SCN, dated 16.01.2018. However, in the SCN, dated 16.01.2018 also the A.O had failed to point out the specific default for which the assessee was called upon to explain that as to why it may not be saddled with penalty u/s 271(1)(c) of the Act. As such the aforesaid failure to point out the specific default for which penalty u/s 271(1)(c) was sought to be imposed, viz. "concealment of the particulars of income" or "furnishing of inaccurate particulars of income" was allowed by the A.O to perpetuate in the SCN, dated 16.01.2018 (supra). Insofar the validity of the jurisdiction assumed by the A.O for imposing penalty u/s 271(1)(c) is concerned, we find that the same has been assailed before us on the ground that as the irrelevant default in the aforesaid 'Show cause' notice(s), dated 30.07.2015 and 16.01.2018 was not struck off by the A.O, therefore, the assessee was not validly put to notice as regards the default for which it was called upon to explain that as to why penalty may not be imposed on it under Sec. 271(1)(c) of the I.T Act.

41. We have given a thoughtful consideration to the facts of the case, and are persuaded to subscribe to the claim of the Ld. AR that the A.O had in both the aforesaid SCN's dated 30.07.2015 and 16.01.2018 failed to point out the specific default for which penalty was sought to be imposed on the assessee company. In our considered view, as both of the two defaults envisaged in Sec. 271(1)(c) i.e 'concealment of income' and 'furnishing of inaccurate particulars of income' are separate and distinct defaults which operate in their independent and exclusive fields, therefore, it was obligatory for the A.O to have clearly put the assessee to notice as regards the specific default for which it was being called upon to explain that as to why penalty under Sec. 271(1)(c) may not be imposed on it. As observed by us hereinabove, a perusal of the 'Show cause' notice(s) issued in the present case by the A.O under Sec. 274 r.w.Sec. 271(1)(c), dated 30.07.2015 and 16.01.2018 clearly reveals that there was no application of mind by the A.O while issuing the same. We are of a strong conviction that the very purpose of affording a reasonable opportunity of being heard to the assessee as per the mandate of Sec. 274(1) of the Act would not only be frustrated, but in fact would be rendered as redundant if an assessee is not conveyed in clear terms the specific default for which

penalty under the said statutory provision is sought to be imposed on it. In our considered view the indispensable requirement on the part of the A.O to put the assessee to notice as regards the specific charge contemplated under the aforesaid statutory provision, viz. 'concealment of income' or 'furnishing of inaccurate particulars of income' is not merely an idle formality but is a statutory obligation cast upon him, which we find had not been discharged in the present case as per the mandate of law.

42. As we have while disposing off the appeal of the assessee for A.Y.2009-10 in ITA No.156/RPR/2014 dealt with at length on the validity of the jurisdiction assumed by the A.O for imposing penalty u/s.271(1)(c) of the Act on an assessee without pointing out in the "Show cause" notice (SCN) issued u/s.274 r.w.s. 271(1)(c) of the Act the specific default for which penalty was sought to be imposed in its case, therefore, the view therein taken by us will apply *mutatis mutandis* for disposing off the present appeal of the assessee for A.Y.2010-11 in ITA No.66/RPR/2021. Therefore, in the backdrop of our aforesaid observations, as the A.O in the present case also had imposed penalty u/s.271(1)(c) of the Act without pointing out in the SCN dated 30.07.2015 and 16.01.2018 the specific default for which

the penalty was sought to be imposed, therefore, the penalty of Rs.358.96 lac (approx.) is on the same terms and reasoning vacated.

43. As we have quashed the penalty imposed by the A.O vide his order passed u/s.271(1)(c) of the Act, dated 02.02.2018 for want of valid assumption of jurisdiction on his part, therefore, we refrain from adverting to the other grounds that have been raised before us, which, thus, are left open. Thus, the **Grounds of appeal Nos. 2 & 3** are allowed in terms of our aforesaid observations.

44. Resultantly, the appeal filed by the assessee in ITA No.66/RPR/2021 for A.Y.2010-11 is allowed in terms of our aforesaid observations.

ITA No.144/RPR/2017 (Assessee's appeal)
A.Y.2011-12

45. We shall now take up the cross-appeals filed by the assessee and the department for A.Y.2011-12. The assessee company has assailed the impugned order passed by the CIT(Appeals) on the following grounds of appeal before us:

> "1(a). That on the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals) ["Ld. CIT(Appeals)"] vide its order dated 31 December 2016 erred in confirming 200% penalty levied in the order dated 07 August 2015 issued under section 271(1)(c) of the Act by Learned Assessing Officer ("Ld. AO") pursuant

to certain additions made in the assessment order under section 143(3) of the Act dated 27 January 2014.

1(b). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in not discharging the onus of justifying that inaccurate particulars of income was furnished and the 'explanation' given by the Appellant is not 'bona fide' and thereby tax is sought to be evaded in the instant case.

1(c). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have failed to appreciate that the Ld. AO has not recorded any factual finding of falsity or bogus claims or furnishing of inaccurate particulars of income or concealment of income w.r.t. additions made by the Ld. AO, in absence of which, no penalty can be sustained.

2(a). That on the facts and in the circumstances of the case and without appreciating the fact that the claim of Rs. 3148.51 lakhs "Land Compensation and Rehabilitation expenses" was based on a legal issue, and that the repeated claims could not be considered as 'inaccurate furnishing of particulars of income', the Ld. CIT(Appeals) have erred in confirming the order of the Ld. AO levying penalty on claim of expenses incurred towards "Land Compensation and Rehabilitation expenses".

2(b). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in confirming penalty, without appreciating the explanations offered by the Appellant for substantiating its claim with respect to 'points of law' and that the penalty levied under section 271(1)(c) of the Act can only be imposed for inadequate/ mala-fide explanations offered by the Appellant with respect to 'facts' and not otherwise.

2(c) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) while upholding the penalty have erred in not considering the fact that the Appellant has filed an appeal before the Hon'ble High Court of Chhattisgarh with respect to the disallowance sustained by the Hon'ble Nagpur Income Tax Appellate Tribunal ("ITAT") in its own case in earlier years wherein the Hon'ble ITAT has itself held that the issue of whether the land compensation and rehabilitation expenses is revenue or capital in nature, is a debatable and legal issue.

2(d) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in not considering the fact that the appellant company is an undertaking of the Government itself and the directors do not have any share in profits of the company and therefore, it

cannot reasonably be inferred that there was a mala fide intention for avoidance of tax.

3(a) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in upholding the penalty on claim of "provisions as per actuarial valuation made on workmen compensation/ benefits of employees" of Rs. 9070.96 lakhs without appreciating the fact that the same was made on actuarial valuations and therefore, the liability for such provisions is an accrued liability and hence, an admissible expenditure.

3(b) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in sustaining the penalty on claim of "provisions as per actuarial valuation made on workmen compensation/benefits of employees" solely on the ground of inadmissibility of claims without appreciating that mere rejection of claim by the assessing officer would not tantamount to furnishing of inaccurate particulars of income leading to levy of penalty.

4(a). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in sustaining the penalty imposed by the Ld. AO on claim of depreciation of Rs.102.22 lakhs on Apollo Hospital building.

4(b). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in not appreciating the fact that Apollo Hospital was owned by the Appellant company and used for the treatment of the workman of the company, therefore the same does not tantamount to furnishing of inaccurate particulars of income leading to levy of penalty.

5. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in confirming the penalty imposed by the Ld. AO on claim of land revenue expenditure of Rs. 0.24 lakhs included under the head miscellaneous expenditure.

6(a). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in sustaining the penalty imposed by the Ld. AO on the interest income of Rs. 3647.27 lakhs arising out of disputed deposits.

6(b). That in the facts and in the circumstances of the case, the Ld. CIT(Appeals) have failed to appreciate the fact that disputed deposits do not belong to the Appellant company and corresponding interest income is also not taxable in the hands of the Appellant company, therefore the same does not tantamount to furnishing of inaccurate particulars of income leading to levy of penalty.

7(a). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in confirming the penalty imposed by the Ld. AO on account of addition of accumulated liquidated damages penalty of Rs. 63.81 lakhs.

7(b). That on the facts and in the circumstances of the case and without appreciating the fact that the said claim was based on a legal issue and the same could not be considered as `inaccurate furnishing of particulars of income', the Ld. CIT(Appeals) have erred in confirming the levy of penalty.

8. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in holding that the penalty on TDS issues of Rs. 365.64 lakhs should be referred by jurisdictional Ld. AO to the Assessing Officer of the TDS wing.

9(a). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in sustaining the penalty imposed by the Ld. AO on the claim of provision for mine closure of Rs. 19846.47 lakhs.

9(b). That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in not appreciating the fact that it is the statutory liability of the owner of the mine to fulfill all the statutory obligations necessary at the time of mine closure, therefore the same does not tantamount to furnishing of inaccurate particulars of income leading to levy of penalty.

10. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) have erred in confirming the penalty on account of addition of Prior Period Expenses of Rs.128.04 lakhs without appreciating the fact that the same was crystallized in the previous year relevant to the assessment year under consideration.

11. That the appellant craves leave to add, alter, amend, modify or rescind the grounds hereinabove either before or during the course of appellate proceedings."

Also the assessee has raised an additional ground of appeal before us on 13.09.2019, which reads as under :

Additional Ground :

12. That the Ld. AO erred in levying penalty under section 271(1)(c) read with section 274 of the Income Tax Act, 1961 without specifying whether it is for "concealment of Income" or for "furnishing of inaccurate particulars of income" in the show cause notice given and

therefore, the impugned penalty order dated 07 August 2015 passed by him is bad in law, thus, deserves to be quashed."

On the other hand the revenue has assailed the order of the CIT(A) by raising the following grounds of appeal before us:

ITA No.97/RPR/2017 (Revenue's appeal)
A.Y.2011-12

"1. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) of the Act by the A.O while disallowing payment of Rs.10511.25 lakhs to made to coal transportation as the assessee company could not justify the rate at which transportation expenses are claimed by the companies run by the Ex-service men ?

2. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) was justified in cancelling the penalty levied u/s 271(1)(c) of the Act by the A.O on account of non-credit of TDS certificate?

3. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) was justified in deleting the penalty levied u/s 271(1)(c) of the Act by the A.O while disallowing prior period expenses of Rs. 2748.04 lakhs without appreciating the facts of the case that the assessee was not able to substantiate the claim with any evidence which could prove that there was any dispute and the dispute is settled in the present year?

4. Whether on the facts and circumstance of the case and on the points of the law Ld. CIT(A) was justified in deleting the penalty levied under proceedings u/s 271(1)(c) of the Act on the impugned addition on the issues, which have been already confirmed by the Ld. CIT(A) in the case of the quantum appeal again such additions?

5. Whether on the facts and circumstance of the case and on 'the points of the law Ld. CIT(A) was justified in ignoring the ratio of the case laws relied upon by the A.O while levying penalty on the additions on the various issues in this case?

6. Whether on the points of law and on facts and circumstances of the case, the Ld. CIT(A) has erred by giving a finding which is contrary

to the evidence on the record, as the Ld. CIT(A) has accepted the submission of the assessee which is factually incorrect, thereby rendering the decision, which is perverse?

7. The order of the Ld. CIT(A) is erroneous both in law and on facts.

8. Any other ground that may be adduced at the time of hearing of appeal."

46. Succinctly stated, the assessee company had filed its original return of income for A.Y. 2011-12 on 28.09.2011, declaring an income of Rs.3309.57 lac (approx.). The return of income filed by the assessee company was processed as such under Sec.143(1) of the Act on 16.07.2012. Thereafter, the assessee filed a revised return of income on 29.03.2013, declaring an income of Rs.3310.18 lac (approx.). However, the revised return of income of the assessee was not processed. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec.143(2) of the Act.

47. Original assessment was thereafter framed by the A.O vide his order passed under Sec.143(3) of the Act, dated 27.01.2014, wherein the income of the assessee company was assessed at Rs.4346.65 lac (approx.) after, inter alia, making certain additions/disallowances, which after being scaled down by the CIT(A) remained as under :-

S. No.	Particulars	Amount (Rs.in lakhs)

1.	Disallowance of land compensation and rehabilitation expenses	3148.51
2.	Disallowance of payment made to ESM transporters	10,511.25
3.	Disallowance of provisions for compensation to employees on actuarial basis	9070.60
4.	Disallowance of assessee's claim for deduction of depreciation on Apollo hospital building	102.22
5.	Disallowance of miscellaneous expenses	0.23 (Rs.23,603/-)
6.	Disallowance of prior period expenses	21.12
7.	Disallowance of LD penalty	63.81
8.	Disallowance of provision for mine closure	19846.47
9.	Addition on account of short credit of interest income and reversal of interest income (M P Sadak)	3647.27

48. The A.O while framing the assessment vide his order passed under Sec.143(3) of the Act, dated 27.01.2014 had also initiated penalty proceedings under Sec.271(1)(c) of the Act for furnishing of inaccurate particulars of income and also without referring to any specific default w.r.t. the impugned disallowances/additions made in the hands of the assessee company, which for the sake of ready reference are culled out as under:

S. No.	Particulars	Mention of limb for initiating penalty in quantum assessment order dated 27.01.2014 passed u/s. 143(3) of the Act.
1.	Disallowance of land compensation and rehabilitation expenses	No specific limb has been invoked while initiating penalty proceedings (A.O's remark in the assessment order-" penalty u/s.271(1)(c) of the Act is separately initiated")
2.	Disallowance of payment made to ESM transporters	No specific limb has been invoked while initiating penalty proceedings (A.O's remark in the assessment order-" penalty u/s.271(1)(c) of the Act is separately initiated")
3.	Disallowance of provisions for compensation to employees on actuarial basis	No specific limb has been invoked while initiating penalty proceedings (A.O's remark in the assessment order-" penalty u/s.271(1)(c) of the Act is separately initiated")
4.	Disallowance of assessee's claim for deduction of depreciation on Apollo hospital building	No specific limb has been invoked while initiating penalty proceedings (A.O's remark in the assessment order-" penalty u/s.271(1)(c) of the Act is separately initiated")
5.	Disallowance of miscellaneous expenses	For "furnishing inaccurate particulars of income".
6.	Disallowance of prior period expenses	No specific limb has been invoked while initiating penalty proceedings (A.O's remark in the assessment order-" penalty u/s.271(1)(c) of the Act is separately initiated")

7.	Disallowance of LD penalty	No specific limb has been invoked while initiating penalty proceedings (A.O's remark in the assessment order-" penalty u/s.271(1)(c) of the Act is separately initiated")
8.	Disallowance of provision for mine closure	No specific limb has been invoked while initiating penalty proceedings (A.O's remark in the assessment order-" penalty u/s.271(1)(c) of the Act is separately initiated")
9.	Addition on account of short credit of interest income and reversal of interest income (M P Sadak)	No specific limb has been invoked while initiating penalty proceedings (A.O's remark in the assessment order-" penalty u/s.271(1)(c) of the Act is separately initiated")

Also, the A.O a/w. the assessment order issued a "Show Cause" notice (SCN) u/s.274 r.w.s. 271(1)(c) of the Act dated 27.01.2014.

49. After the order passed by the CIT(A), dated 11.03.2015 disposing off the quantum appeal of the assessee, the A.O vide a SCN, dated 09.07.2015 called upon the assessee to explain that as to why penalty under Sec.271(1)(c) of the Act may not be imposed on it w.r.t. the additions/disallowances that were sustained by the CIT(A). As the reply filed by the assessee on 22.07.2015 did not find favor with the A.O, therefore, he vide his order passed under Sec.271(1)(c) of the Act, dated 07.08.2015 saddled it with a penalty of Rs.30904.14 lacs

(approx.) for furnishing of inaccurate particulars of income w.r.t the aforesaid additions/disallowances that were sustained/upheld by the CIT(Appeals), as under:

S. No.	Particulars	Mention of limb for levying penalty in penalty order dated 07.08.2015
1.	Disallowance of land compensation and rehabilitation expenses	For "furnishing inaccurate particulars of income".
2.	Disallowance of payment made to ESM transporters	For "furnishing inaccurate particulars of income".
3.	Disallowance of provisions for compensation to employees on actuarial basis	For "furnishing inaccurate particulars of income".
4.	Disallowance of assessee's claim for deduction of depreciation on Apollo hospital building	For "furnishing inaccurate particulars of income".
5.	Disallowance of miscellaneous expenses	For "furnishing inaccurate particulars of income".
6.	Disallowance of prior period expenses	For "furnishing inaccurate particulars of income".
7.	Disallowance of LD penalty	For "furnishing inaccurate particulars of income".
8.	Disallowance of provision for mine closure	For "furnishing inaccurate particulars of income".
9.	Addition on account of short credit of interest income and reversal of interest income (M P Sadak)	For "furnishing inaccurate particulars of income".

50. Aggrieved, the assessee assailed the order passed by the A.O under Sec.271(1)(c) of the Act, dated 07.08.2015 before the CIT(A), who partly sustained the order of the A.O, observing as under :-

> "**Ground No.1(a)-** That on the facts and circumstances of the case, the penalty order passed by the A.O u/s.271(1)(c) of the Act is illegal, invalid and is liable to be quashed.
>
> **Ground No. 1(b)** — That on the facts and in the circumstances of the case, the notice u/s 271(1)(c) issued by the AO is illegal, invalid and is liable to be cancelled.
>
> **Decision** — The allegations made by the learned AR could not be substantiated by the any evidence and the g round of appeal is of general in nature, hence dismissed.
>
> **Ground No. 2(a)** — That on the facts and circumstances of the case, the AO erred in levying penalty on disallowance inflicted by him in the assessment order on the issue of allowability of expenses incurred on rehabilitation of people/villagers & payments to State Government for obtaining use of land for mining purpose for a limited period.
>
> AND
>
> **Ground No. 2(b)** — That on the facts and in the circumstances of the case, the AO erred in not appreciating that said issue is legal issue and involve substantial question of law.
>
> AND
>
> **Ground No. 2(c)** — That on the facts and in the circumstances of the case, the AO erred in not appreciating that appellant has not furnished inaccurate particulars in respect to above issue.
>
> The Ld. AR submitted that looking to the nature, the expenditure incurred on obtaining lease hold lands from State Governments for mining purposes and expenditure on land compensation and rehabilitation of villagers, has been consistently claimed as revenue in nature by the assessee. The Hon'ble ITAT, Nagpur Bench has also decided that this issue is debatable and legal. The Hon'ble ITAT bench Nagpur decided the issue in favour of revenue for A.Y. 1994-95, A.Y. 1995-96 and A.Y. 1996-97 and on the basis of the order of the Hon'ble Tribunal, similar disallowance has been made every year since A.Y. 1997-98. No penalty was initiated in the earlier years against the addition made for such disallowance of the aforesaid

expenditure. The Ld. AO had only initiated/imposed penalty against the addition in A.Y. 2008-09 and 2009-10.

The Ld. AR invited reference to order of the Appellate Tribunal, Nagpur in Page No. 35 to 41 which indicate that the Bench discussed various judgment of the Apex Court as well as judgment of various High Courts placed in favour of appellant company before coming to conclusion. This indicates that the issue is highly debatable and legal in nature. The addition made in the subsequent years including year under reference was confirmed by CIT(Appeals) after respectfully following this decision of the Hon'ble Tribunal. There is no definition given in the Act to what is capital or revenue expenditure. It is determined from the circumstances and facts of the case as well as commercial prudence. This issue is a legal issue and there are various judgments wherein such expenses are held to be of revenue expenditure. The appellant company has filed appeal against the impugned order of Hon'ble. ITAT, Nagpur Bench and it is pending before the Hon'ble High Court of Chhattisgarh for adjudication.

Decision- This issue is having past litigation and my Ld. Predecessor had confirmed the addition made by the AO by observing the factual position. The factual position as narrated by my predecessor reads as under:

The appellant company claimed expenditure representing payment made to State Government to acquire surface right as well as the right to possession in respect of lease hold land for a longer period and for incurring expenditure. pertaining to rehabilitation of people in course of obtaining the use of l4nd for mining purposes as revenue expenditure. The AO observed that the appellant company claimed the expenditure as revenue in nature because the company has not become the owner of the land, but merely obtained the right to mine coal situated at that area. The appellant company preferred appeal before the CIT(Appeals), Bilaspur and Hon'ble ITAT, Nagpur Bench, Nagpur. The issue was decided in favour of the Revenue vide order of the Hon'ble Tribunal in ITA No.18-22/Nag/2001 dated 28-02-2002. The appellant company has preferred appeal before the Hon'ble High Court of Chhattisgarh against the impugned order of Hon'ble Tribunal, which is pending for adjudication. However, the appellant company has been consistently claiming the expenditure as revenue in nature in the return of income filed up to the A.Y. 2009-10 and the AO has been denying the expenditure as inadmissible being capital in nature every year by placing reliance on the decision of the highest fact findings authority as well as in the ratio of the case in Sitalpur Sugar Works Vs. CIT reported in 49 ITR 160 (SC); International Airport Authority of India Vs. CIT reported in 254 ITR 657 (Del); Hardillia Chemicals Ltd. Vs. CIT reported in 218 ITR 598 (Born); Jagmohan Rao Vs. CIT reported in 75 ITR 373 (SC). The order

of the AO is being sustained by the First Appellate Authority by respectfully following the above decision of the jurisdictional Tribunal.

The Hon'ble Tribunal analyzed the claim on the basis of aim and object of the expenditure as well as resultant advantage to characterize whether the concerned expenditure is capital and revenue in nature by referring to decision of the Hon'ble Apex Court in the case of Bikaner Gypsums Ltd. Vs. CIT, the appellant company acquired the surface right from Government in terms of the lease agreement for using the said land for its surface operation for a long period of lease which itself is a long term period. After acquiring such surface right in respect of lease hold land, the appellant company acquires the right to possession of the said land from the Villager who were occupying the said land, for this purpose, the appellant company spent the alleged sum for relocating and rehabilitating the said villagers. The Hon'ble Tribunal discussed case laws relied on by the appellant company like CIT Vs. R.J. Trivedi; Gotan Line Syndicate Vs. CIT; Madras Auto Services Limited Vs. CIT; Associated Cement Company Limited Vs. CIT and distinguished the ratio from the facts and circumstances of the case in hand. The Hon'ble Tribunal discussed the ratio of the case in Assam Bengal Cement Company Limited Vs. CIT; N. Peer Saheb Vs. CIT; Chloride India Limited Vs CIT; Lucky Bharat Garage Vs. CIT; R.B. Seth Olchand Sugandhchand Vs. CIT and finally concluded that the impugned expenditure incurred by the appellant company for acquiring surface right as well as the right to possession in respect of lease hold land for engineering period is a capital expenditure and affirm the order of CIT(Appeals), Bilaspur confirming the addition made by the AO by treating the same as capital expenditure. The appellant company has preferred appeal against the impugned order of Hon'ble Tribunal before Hon'ble High Court of Chhattisgarh and it is pending for adjudication.

Regarding claim of "Land Compensation and Rehabilitation Expenses" as revenue expenditure, the Hon'ble Tribunal has held the expenditure as capital in nature. But, the appellant company has been consistently claiming it as revenue expenditure. Even after finality of the fact, continuity in incorrect claim in law for expenditure on land compensation and rehabilitation which has resultant effect of reducing the taxable income to that extent and thus, it amounts to giving inaccurate particulars of income in the return. The explanation offered by the appellant company is neither bonafide nor substantiated. Reliance is placed in the decision of A.M. Shah Vs. CIT 238 ITR 415 (Guj); CIT Vs. Smt. P.K. Kochammu Anna, Peroke 125 ITR 624; ACIT Vs. Khanna & Annadhnam 142 TTJ 1 (Del) and it is held that penalty for furnishing such inaccurate particulars of expenses attracts penalty u/s 271(1)(c) of the Act.

The position of law emerging from the factual matrix of the case in Reliance Petro Products Pvt. Ltd. Vs. CIT is that the addition made by the AO in respect of the interest claimed as a deduction u/s 36(1)(iii) of the Act was deleted by the CIT(A) because it had already been disallowed and added in earlier years and the assessee was under bonafide belief that on the payment basis it was allowable in later years. The Hon'ble Tribunal restored the issue to the file of the AO. The appeal filed by the assessee against the order of the Tribunal was admitted by the High Court. It was, in these circumstances that the Hon'ble Apex Court concluded. that the assessee had neither concealed the income nor filed inaccurate particulars thereof. This, however, is not the factual position in the case in hand and the facts of the present case are clearly distinguishable. It is true that mere submitting a claim which is incorrect in law would not amount to giving inaccurate particulars of income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be bonafide. If the claim besides being incorrect in law is malafide, Explanation-1 to Section 271(1) come into plays and works to the disadvantage of the appellant company.

In the given facts and circumstances of the case and legal propositions, it is held that the explanation furnished by the appellant company justifying deduction on Land Compensation and Rehabilitation Expenses is not bona fide or substantiated and hence, presumption in Explanation-1 to section 271(1)(c) is attracted. The penalty imposed against the addition is confirmed for furnishing inaccurate particulars of income in the return.

Ground No. 3(a) — That on the facts and circumstances of the case, the AO erred in levying penalty on disallowance inflicted by him in the assessment order on account of expenditure on coal transportation through Ex Servicemen Companies.

AND

Ground No. 3(b) — That on the facts and in the circumstances of the case, the AO erred in not appreciating that appellant has not furnished inaccurate particulars in respect to above issue.

This issue is having past litigation and my Ld. Predecessor had confirmed the addition made by the AO by observing the factual position, the factual position as narrated by my predecessor reads as under:

Induction of Ex-Servicemen Transport Companies was done at the behest of Government of India long time back to break the transport cartel in Bharat Cooking Coal Limited and Central Coalfields Limited both being subsidiary of Coal India Limited. Later

on and on the basis of sponsorship from the Director General of Resettlement, Ministry of Defense, it was extended to other subsidiaries of CIL including SECL, the appellant company. ESM companies are engaged for coal transportation from coal faces were no civilian transporters are engaged. ESM companies do not charge rates of their own. Normative rates fixed by the company as per guidelines of Price Water House Coopers, an international consultancy firm of repute are being charged according to distance and load transported. During the year, the appellant incurred an amount of Rs. 42045.01 lakhs towards coal transportation carried out by the ESM coal transporting companies. The AO disallowed 50% of the said expenditure on adhoc basis on the ground that there is allegation level against the company that rates paid to ESM companies are on higher side. It is worthwhile here to mention that these allegation of the Department persists from the A.Y. 1998-99 and after expiry of so many assessment years, no facts has been brought out by the Department that these allegations are true. The disallowance continues on the basis of only allegation as recorded in the assessment order. Disallowance is made totally on unsubstantiated fact and arbitrarily arriving at 50% of expenses. There is nothing on record to prove that the appellant company has filed any inaccurate particulars, on this issue so as to impose penalty u/s 271(1)(c) of the Act. The Hon'ble CIT(Appeals), Bilaspur in its relevant appellate order stated that though the appellant's claimed in the above matter cannot be accepted in its entirety, yet at the same time the estimated disallowance made by the AO is on the higher side. Under the circumstances, the disallowance in respect of the above expenditure was reduced to 25% of the total claim or in other words,' 50% of disallowance made by the AO was granted as, relief. Needless to mention that the company is in appeal before the ITAT, Raipur Bench for the balance amount and appeal preferred is at present pending for adjudication. It is pertinent here to mention that similar disallowance and part relief by Hon'ble CIT(Appeals) are continuing from past several assessment years, yet no penalty u/s 271(1)(c) has been initiated/imposed till A.Y. 2007-08 by the Department because of e reason that there is no inaccurate particulars filed by the appellant company in the return of any of the earlier years.

The Ld. AR placed reliance in the decision in CIT Vs. Reliance Petro Products (P) Limited 322 ITR 158; CIT Vs. Sivananda Steels Limited 256 ITR 683 (Mad); CIT Vs. Dhoolie Tea Co. Ltd 231 ITR 65 (Cal); Township Read Estate Developers (India) (P) Ltd Vs. ACIT 21 taxman.com 63 (Mum) and submitted that there is no element of either concealment of income or furnishing of inaccurate particulars of income in the return in view of provisions of section 271(1)(c) and hence, penalty imposed by the Ld. AO against the additions is incorrect and liable to be quashed.

In another submission, the Ld. AR placed reliance in the case of Dilip Shroff 291 ITR 519 (Sr); Dharmendra Textile Processors 306 ITR 277 (SC); CIT (Central-1) Vs. Jackson Ltd. in ITA 48/2013 and ITA 49/2013 of Hon'ble High Court of Delhi; M/s. Gopi Cold Storage Pvt. Ltd. Vs. CIT (Central-1), Kolkata in Appeal No. 71/2011 of Hon'ble Kolkata High Court; Price Water House Coopers Vs. CIT of Hon'ble Apex Court and submitted that details supplied by the appellant company in its return were not found to be incorrect or erroneous or false and hence, penalty is not sustainable. Further, the Ld. AR submitted that the appellant company is a Government Company and its Directors or other employees were not connected with sharing of profits. They were only interested in running the affairs of the company. Therefore, no motive could be attributed to the Directors or employees for reduction or suppression of profits for purpose of evading tax. It is case of one Government Department paying tax to the other Government Department and therefore, there could be no intention to suppress the profit for evasion of tax. In this regard, the Ld. AR placed reliance in the case of H.P. State Forest Corporation Limited Vs. DCIT 93 ITD 442 (Chd); ITO Vs. Hindustan Petroleum Corporation Limited 16 ITD 574 (Mum); Indian Petro Chemicals Pvt. Ltd. Vs. JCIT, Range-3, Baroda 123 ITD 293 (Ahd).

The appellant company claimed contractual expenses being payments made to transporters for transportation of coal coke, sand and other items. This includes payment to Ex-Service Man Companies for transportation work got done through them. The AO observed that necessary details such as quantity transported and rates charged by the ESM companies alongwith their names and addresses could not be furnished. This information was also required by the Department in the light of the fact that there are allegations leveled against the company to the effect that the assessee company had paid loading and transportation charges to the ESM companies at a very higher rate i.e. almost 70% to 80% more than that of other (Non-ESM) companies. Relying on the reasons recorded in the assessment orders on this issue for the Asst. Yrs. 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 & 2008-09, he disallowed 50% of the expenses booked under this head i.e. transportation charges paid to the ESM by company treating the same as payments made for non-business purposes and added Rs. 11603.52 lakhs to the total income declared in the return filed.

Decision- The 1st Appellate Authority had discussed the issue at length in his appellate order holding that in absence of complete and verifiable details, the AO has to resort to some estimates for allowance/disallowance of a particular expenditure, which has also been done in the present case by the AO by disallowing 50% of the

total expenses of Rs.23207.05 lakhs i.e. Rs.11603.52 lakhs. However, the addition was restricted to 50% i.e. Rs. 5801.76 lakhs.

After considering the explanation furnished by the appellant company, the AO imposed penalty under the aforesaid section for furnishing inaccurate particulars of income in the return and concealing its particulars of income by claiming wrong deduction. Section 271(1)(c) of the Act provides for imposition of penalty in case the AO, in the course of any proceedings under the Act, is satisfied that any person has concealed particulars of his income or has furnished inaccurate particulars of such income. Explanation-1 to Sub section (1) to Section 271 of the Act provides that where in respect of any facts material to the computation of the total income of any person, such person fails to offer an explanation or offers an explanation which is found to be false or he offers an explanation, which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of its total income, have been disclosed by him, then the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purpose of clause (c), be deemed to represent the income in respect of which particulars have been concealed. Thus, in the case of failure of the assessee to offer any explanation or explanation furnished by him being found false, penalty may be imposed on him. However, if the assessee offers an explanation, mere failure on his part to substantiate it will not be enough to warrant penalty, if the explanation is bonafide, and all the facts relating to the same were disclosed by him in the return. Explanation-1 to Section 271(1)(c) would be inapplicable in respect of any amount added or disallowed as a result of rejection of the explanation furnished by the assessee, provided that his explanation is shown to be bonafide and all the facts relating to the same and material to the computation of total income was disclosed by him. The position of law, thus emerges is that so long as the assessee has not concealed any material fact, or the factual information given by him has not been found to be incorrect, he will not be liable to imposition of penalty u/s 271(1)(c) of the Act, even if the claim made by him is unsustainable in law, provided that the either substantiated explanation offered by him or the explanation offered by him, even if not substantiated, is found to be bonafide. In other words, if the explanation is neither substantiated nor shown to be bonafide, Explanation-1 to Section 271(1)(c) would come into play and the assessee will be liable to penalty leviable u/s 271(1)(c) of the Act in respect of the additions or disallowances made by the AO in the assessment.

The expression used in clause (c) is "has concealed the particulars of his come" or "furnished inaccurate particulars of such

income". Therefore, both in cases of concealment and inaccuracy, the phrase "particulars of income" is used. It will be noted that as regards concealment the expression in clause (c) is "has concealed the particulars of his income" and not "has concealed his income". It is obvious that the penal provisions would operate when there is a failure of duty, to disclose fully and truly particulars of income, imposed under the Act and the Rules there under. The duty is enjoined upon a person to make a correct and complete disclosure of his income and it is only when he fails in his duty by not disclosing his income or part thereof, he conceals the particulars of his income. The duty is enjoined upon him to make a complete disclosure of his income as well as a correct disclosure. Therefore, if the disclosure made of the particulars of income is incorrect, then also be commits breach of his duty. Such defaults entail the penal consequences contemplated by s. 271(1)(c)(iii) of the Act.

Under s. 139(1) of the Act, it is inter alia provided that every person, if his total income in respect of which he is assessable under the Act during the previous year, exceeded the maximum amount which was not chargeable to income-tax, shall furnish a return of his income in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed. It is, therefore, obligatory on a person whose total income exceed the maximum amount which was not chargeable to income tax, to furnish a return of his income during the 'previous year', in the prescribed form. Such return is required to be verified in the prescribed manner. Not only is he obliged to furnish return of his income, meaning thereby to disclose fully and truly all his income, but he is also required to set forth 'other particulars' as may be prescribed. The word 'prescribed' as defined by s. 2(33) of the Act means, 'prescribed by the Rules under the Act'. The forms are accordingly prescribed by the Rules framed under the Act. Section 140 of the Act lays down as to by whom such return can be signed and verified.

It will, thus, be seen that the form of return of income included a variety of particulars to be disclosed and the particulars of income to be disclosed can be seen against the items which related to disclosure of income besides particulars other than those which related to the income of the assessee, such as his name, address, status etc. The forms of returns are obviously prepared in the context of the duty of a person to disclose his income from various sources under various heads of income as statutorily provided and his duty to disclose his total income in the return. The extent of his total income will determine the total income-tax liability of a person. "Total income" is defined in s. 2(45) of the Act and it means the total amount of income computed in the manner laid down in the Act. Thus, for arriving at the total income, the income derived from all sources is to

be considered as provided by section 5, when it is received or deemed to be received by a person. All income for the purpose of charge of income-tax and computation of total income is required to be classified under distinct heads of income such as salaries, income from house property, profits and gains of business or profession, capital gains and income from other sources.

Thus, under each head of income, there are provisions for deductions which are to be made while computing the income chargeable under that head. It, therefore, follows that it is an obligatory duty cast upon a person filing the return of income to disclose all his income derived from any source under various heads and indicate the income under each head, which is chargeable to income-tax, after making the permissible deductions. Disclosure of income would be disclosure of particulars of income, which a person is duty-bound to disclose in fulfillment of his statutory obligations to pay tax on the income chargeable to tax.

It is in the background of discharge of these statutory obligations of an assessee to fully and truly disclose his income under various heads and indicate the income under those heads which is chargeable to income-tax after making permissible deductions, applicability of provisions of section 271(1)(c) is to be viewed. If a person obliged to furnish the particulars of his income, omits to furnish them, he thereby conceals the particulars. This concealment may take various forms like non-disclosure of particular head of income. The obligation is not only to disclose particulars of income but to disclose them correctly and completely. If, while disclosing the particulars of income in the return, he puts them under a wrong head, he can be said to be furnishing inaccurate particulars of income. The particulars of income can be made inaccurate in variety of ways, a glaring illustration of which would be where the assessee, while stating the income under a particular head, works out the income chargeable to tax after making deductions which are falsely made. Such a process would make the particulars of income inaccurate. In such cases, whether the income is not disclosed against the constituent item of the return in which it falls or is partly not disclosed, or the particulars of income given in the return are incorrectly stated by any machination, the impact is bound to be on the figure of gross total income to be mentioned under various heads of income and also on the total income chargeable to tax. In fact, reducing the figure of income that would be chargeable to tax would be the purpose of concealment of particulars of income or giving inaccurate particulars of income. The expression "particulars of income" would have relevance to all the particulars of income which the assessee is required to give in his return fully and truly including the particulars of income chargeable to tax under various heads and

the total income. Therefore, any concealment or inaccuracy in the particulars of income in the return occurring at any stage up to and inclusive of the ultimate stage of working out of total income would attract the penalty provision of s. 271(1)(c) of the Act. Every figure in the return which is set opposite to the item of income is a particular of income, whether the figure is one which is stated independently of anything else that appears in the return or the documents accompanying it or whether it is something derived from other figures elsewhere stated in such return or documents. False result may be produced by the falsity of one or more of the constituent items in the return. The words inaccurate particulars would cover falsity in the final figure as also the constituent elements or items. They simply would mean inaccurate in some specific or definite respect whether in the constituent or subordinate items of income or the end result. relied on A.M. Shah Vs. CIT 238 ITR 415 (Guj)].

The appellant company has preferred appeal before the Hon'ble Tribunal against the order of CIT(Appeals), Bilaspur confirming the additions partially, but there is no specific request from its side to keep the penalty proceedings against the impugned penalty order pending till disposal of the quantum appeal before the Hon'ble Tribunal. However, the reasons for addition were the failure on the part of the company to furnish details of expenses with proper evidence and though the additions are confirmed partially by the 1st Appellate Authority, I respectfully follow the decision of my learned predecessor in cases of earlier years who held that there is neither the element of concealment of income nor any inaccurate particulars of income furnished in the return by the assessee and The AO has not brought out any falsity or bogus claim of expenditure incorporated under the above heads of expenses. Therefore, it is found that the submission of the Ld. AR is acceptable and hence, no penalty under the aforesaid section is imposable against such addition. Thus the penalty imposed by the learned AO in the issue of payments made to the ESM by the company is not for business purpose is hereby cancelled.

Ground No. 4(a) — That on the facts and circumstances of the case, the AO erred in levying penalty on disallowance inflicted by him in the assessment order on account of actuarial valuation made on workman compensation/benefits of employees.

Ground No. 4(b) — That on the facts and in the circumstances of the case, the AO erred in not appreciating that appellant has not furnished inaccurate particulars in respect to above issue.

Decision- The issue has been discussed by the AO in para 3.3 of his penalty order and since the addition had been confirmed by the first

appellate authority following his worthy predecessor after thoroughly distinguishing the decisions cited by the learned AR. The AO held that the assessee is creating provisions as per actuarial valuations against various head of expenses. The assessee is doing as per AO as is being done by Coal India Ltd., the holding company. During penalty proceedings the learned AR could not substantiate the provision made by the company and the basis to reach at the actuarial valuation. Since this is a self-made procedure adopted by the assessee, which has no basis and also no past history of such valuation the additions had been confirmed during appellate proceedings. The issue whether it is equal to filing inaccurate particulars of income or not depends on the basis of valuation itself which could not be explained by and substantiated by the learned AR of the assessee. During appellate proceeding also there was no effort made by the company to so the basis for valuation to reach at actuarial valuation. I do not find any infirmity in the satisfaction of the AO for imposition of penalty on this issue, thus to this extent the penalty is confirmed and the ground of appeal is dismissed.

Ground No.5(a)- That on the facts and circumstances of the case, the A.O erred in levying penalty on disallowance inflicted by him in the assessment order on account of depreciation on Apollo Hospital building.

Ground No. 5(b) — That on the facts and in the circumstances of the case, the AO erred in not appreciating that appellant has not furnished inaccurate particulars in respect to above issue.

Decision- The AO has discussed the issue in para 3.4 of his penalty order. It is a fact that Hospital is run in a building which may be called as House Property. The man power is required to the run the Hospital in the form of Doctors and Paramedical Staff. The assessee has claimed that the Hospital Building attracts depreciation. In the quantum appeal it had been held that it is only house property income because the assessee is deemed owner of the building and business of the assessee is the mining and trading of the coal and not to run the hospital. Since there is no nexus between running's of hospital for the public, mere referential treatment of the employees of the company if entertained by the hospital named as Apollo Hospital, the assessee can not slip in the shoes of the persons who are technically qualified for running the hospital. The claim of depreciation certainly equates with filing of inaccurate particular of income. The penalty imposed by the AO on this amount is hereby confirmed. The ground of appeal is dismissed.

Ground No. 6(a) — That on the facts and circumstances of the case, the AO erred in levying penalty on disallowance inflicted by him in the

assessment order on account of expenditure land revenue expense included under miscellaneous expenses.

Ground No. 6(b) — That on the facts and in the circumstances of the case, the AO erred in not appreciating that appellant has not furnished inaccurate particulars in respect to above issue.

Decision- I have carefully considered the arguments of the learned AR and I am of considered view that payment of land revenue by a mining company can not be imagined as its revenue expenditure for purchasing of immovable property, hence I do not find any infirmity in the satisfaction of the AO to impose penalty for this amount of Rs. 23,603/-

Ground No. 7(a) — That on the facts and circumstances of the case, the AO erred in levying penalty on adding interest income which arises out of disputed issues and such interest income does not belong to the appellant company.

Ground No. 7(b) — That on the facts and in the circumstances of the case, the AO erred in not appreciating that appellant has not furnished inaccurate particulars in respect to above issue.

Decision- The issue has been discussed in the assessment order by the learned AO and clearly understood during appellate proceedings. The assessee had received trading advances from certain persons who were found later on by the company as involved in - the fraud. The amount had been forfeited by the company and the affected person litigated the issue up to Supreme Court. The Hon'ble Apex Court had directed that the wit be returned to the persons. The amount had been placed in the custody of Collector of district Sahdol who after his best effort could not find out the persons and finally the amount had been given back to the company. Since the amount had been received as trade advance and not as capital advance the forfeiture of such amount with the provision of law of limitation has to be treated as the income of the assessee for the year in which law of limitation became effective and interest accrued thereon has to be income of the assessee because by way of forfeiture and by operation of law of limitation the said amount as well as interest thereon has become income of the assessee. I do not find any infirmity in the satisfaction recorded by the AO for imposition of penalty. The penalty imposed by the AO on this issue is confirmed and ground of appeal is dismissed.

Ground No. 8(a) — That on the facts and circumstances of the case, the AO erred in levying penalty on disallowance inflicted by him on account of claim of TDS certificate.

Ground No. 8(b) — That on the facts and in the circumstances of the case, the AO erred in not appreciating that appellant has not furnished inaccurate particulars in respect to above issue.

Decision- The assessing officer has imposed penalty for claiming TDS. The fact is that assessee had not disclosed the income but claimed TDS on the ground that such income has been reversed. In my considered view Rule 37BA is clear about giving credit to the TDS but the AO is not empowered to impose penalty for bogus claim of TDS because he does not have jurisdiction of the matter of TDS issues. The penalty is cancelled on this issue but the AO has to be freed by the appellate authority to refer the issue to the TDS wing so as the suitable action may be taken by the AO of TDS wing.

Ground No. 9(a) — That on the facts and circumstances of the case, the AO erred in levying penalty on disallowance inflicted by him on account of Accumulated LD penalty.

Ground No. 9(b) — That on the facts and in the circumstances of the case, the AO erred in not appreciating that appellant has not furnished inaccurate particulars in respect to above issue.

Decision- The AO has discussed the issue in para 3.8 of his assessment order. The issue had been decided by my worthy predecessor who held the LD penalty as receipt of capital in nature because assessee could not furnish the details for delay in supply of machineries. Since the amount has been treated as capital in nature for failure during appellate proceedings even substantiating the claim, I find no infirmity in the order of the AO on this issue the penalty imposed by the AO on this account is hereby confirmed and the ground of appeal is dismissed. Ground No. 10(a) — That on the facts and circumstances of the case, the AO erred in disallowing the provision made on account of mine closure ignoring that it is a statutory liability of the owner of the mine to fulfill all statutory obligations necessary at the time of mine closure.

Ground No. 10(b) — That on the facts and in the circumstances of the case, the AO erred in considering the same as a mere provision whereas it is defined liability of the appellant to be executed at a future date.

Ground No. 10(c) — That on the facts and in the circumstances of the case, the AO erred in not appreciating that appellant has not furnished inaccurate particulars in respect to above issue.

Decision- The assessee makes the provisions for mine closures expenditure. The Central Government through Ministry of Coal has

directed to park the fund every year in ESCROW account and when all expenses under different minor heads get consolidated the Government shall permit the withdrawal of such amount for the purpose of mine closure. The directions of Government to the assessee clearly indicates that mine closure expenses are not revenue nature expenses because these are to be parked in the new ESCROW account. By any stretch of imagination such parking of fund in the bank cannot be termed as expenditure. On the facts and circumstances of the case I am of considered view that there is no infirmity in the conclusion arrived at by the AO to satisfy himself while imposing the penalty. Penalty imposed by the AO is hereby confirmed and the ground of appeal is dismissed.

Ground No. 11(a) — That on the facts and circumstances of the case, the AO erred in disallowing/adding back to income expenditure of the company booked under the Prior Period Expenses totaling Rs. 2748.04 lakhs.

Ground No. 11(b) — That on the facts and in the circumstances of the case, the AO erred in not appreciating that appellant has not furnished inaccurate particulars in respect to above issue.

Decision- The has discussed the issue in para 3.6 of his assessment order and my learned predecessor on the basis of section 211 of Companies Act read with part II of schedule VI requiring the assessee to book only that much income or expenses which reflect the result of working of company for the period covered by the accounts. The assessee had debited the prior period expenditure and relying on the facts that prior period expenditure can not be booked. So far as the revision of wages is concern I do not agree with the findings of learned AO for Rs. 262000000/- amounts to the concealment because. it had been accepted by the management under NCWA. So far as other items. such as 11,37,000/- for failure of offering for taxation and Rs. 9,75,024/- not disclosing current years interest and reversal of entry is certainly equal to filing of inaccurate particular of income. Thus the penalty imposed by the AO on account 26,20,00,000/- is hereby cancelled and remaining amount on this penalty imposed by the AO is confirmed. The ground of appeal is partly allowed in this ground.

Ground No.12 — Without prejudice to all the grounds taken above and that on the facts d circumstances of the case, the AO erred in levying penalty @ 200% to a central Government owned public sector company without taking into cognizance that the appellant has always coordinated in all manner and matter with the Department and there was no malafide intention what so ever to evade taxes.

> **Decision-** It is true that assessee is a public sector company. The provision of concealment speak about filing of inaccurate particulars of income and in recent unreported judgment the Hon'ble Apex Court has upheld penalty imposed by the revenue on the public sector company. The income tax does not distinguish the private or public company. The argument of learned AR lacks force. The ground of appeal is dismissed.
>
> **Ground No.13** - That the appellant craves leave to add/or amend, modify, alter or rescind the grounds hereinabove before or at the hearing of this appeal.
> **Decision**- the learned AR did not add, amend/ modify any ground of appeal, hence this ground of appeal is dismissed."

51. The assessee being aggrieved with the order of the CIT(Appeals) to the extent he had upheld the penalty imposed by the Assessing Officer u/s 271(1)(c) of the I.T Act has carried the matter in appeal before us. It was submitted by the ld. A.R that the A.O had issued two "Show cause" notices (SCN's) to the assessee company under Sec. 274 r.w.s 271(1)(c) of the Act, dated 27.01.2014, Annexure-10 of the assessee's compilation and dated 09.07.2015, Anneure-11 of the assessee's compilation. It was the claim of the ld. A.R that as the Assessing Officer had failed to point out the specific default in both the "Show Cause" notices (herein referred to as 'SCN's) issued u/s 274 r.w.s 271 of the Act, dated 27.01.2014(supra) and dated 09.07.2015 (supra), therefore, the penalty thereafter imposed by him u/s 271(1)(c) of the I.T. Act cannot be sustained and is liable to be vacated. The ld. AR in order to drive home his aforesaid claim had drawn our attention

to both the aforesaid SCN's, i.e dated 27.01.2014 and 09.07.2015. Referring to the aforesaid discrepancy in the SCN's, dated 27.01.2014 and 09.07.2015, it was submitted by the ld. AR that as the AO had failed to validly put the assessee to notice as regards the specific default for which the impugned penalty under Sec. 274 r.w.s 271(1)(c) was sought to be imposed, therefore, the assessee had remained divested of an opportunity to put forth in its defense a clear explanation that no such penalty u/s 271(1)(c) was called for in its case. The ld. AR in support of his aforesaid contention had relied on a host of judicial pronouncements, as under:

(i). CIT Vs. Manjunatha Cotton & Ginning Factory
(2013) 35 taxmann.com 250 (Karnataka)

(ii). Mohd. Farhan A. Shaikh Vs. PCIT
(2021) 434 ITR 1 (Bombay)(FB)

(iii). CIT Vs. Samson Perinchery
(2007) 392 ITR 4 (Bombay)

(iv). Pr. CIT (Central) Vs. Golden Peace Hotels and Resorts (P) Ltd.
(2021) 124 tamnn.com 249 (SC)

(v). PCIT Vs. Goa Coastal Resorts and Recreation (P) Ltd.
(2021) 130 taxmann.com 379 (SC)

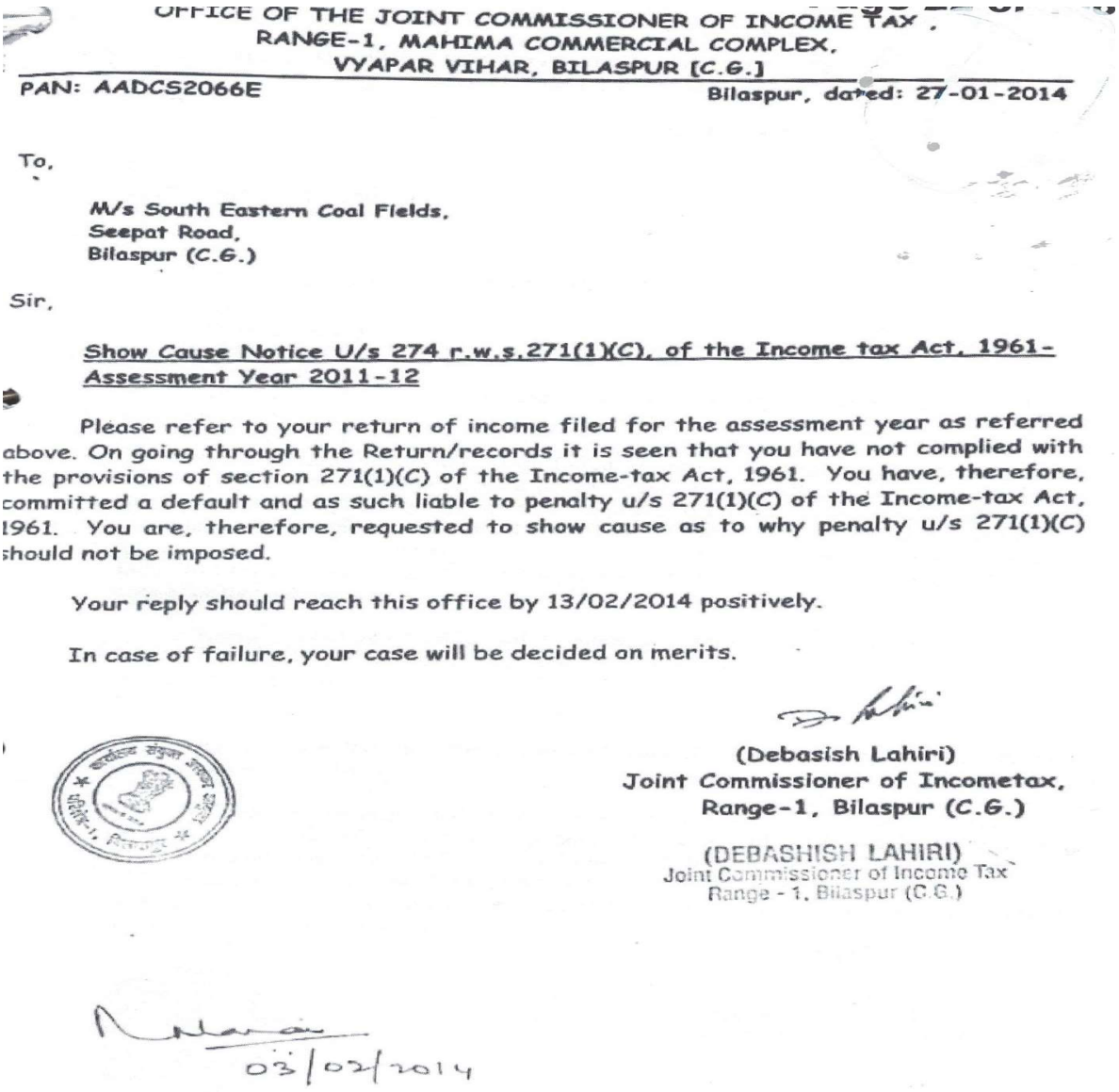
(vi). Dilip N. Shroff Vs. JCIT
(2007) 161 Taxman 218 (SC).

52. Per contra, the Ld. Departmental Representative (for short 'D.R') relied upon the orders of the lower authorities. It was submitted by the Ld. D.R that as the assessee company in the course of the penalty proceedings was afforded sufficient opportunity, thus, it was incorrect on its part to claim that no opportunity of being heard was afforded to it. It was submitted by the ld. D.R that now when the assessee company in compliance to the SCN, dated 27.01.2014 r.w SCN, dated 09.07.2015 had came forth with an explanation that no penalty u/s 271(1)(c) of the Act was called for in its hands, therefore, it was beyond comprehension that as to on what basis it could thereafter claim that it was not validly put to notice about the default for which penalty u/s 271(1)(c) of the Act was sought to be imposed on it.

53. We have heard the ld. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

54. Admittedly, on a perusal of the SCN, dated 27.01.2014, it stands revealed that the Assessing Officer had failed to point out the specific default while calling upon the assessee company to explain that as to

why it may not be subjected to penalty u/s 271(1)(c) of the Act. For the sake of clarity, the SCN, dated 27.01.2014 (as per Annexure 10 of the assessee's compilation dated 13.03.2019) is culled out as under:



OFFICE OF THE JOINT COMMISSIONER OF INCOME TAX ,
RANGE-1, MAHIMA COMMERCIAL COMPLEX,
VYAPAR VIHAR, BILASPUR (C.G.)

PAN: AADCS2066E

Bilaspur, dated: 27-01-2014

To,

M/s South Eastern Coal Fields,
Seepat Road,
Bilaspur (C.G.)

Sir,

Show Cause Notice U/s 274 r.w.s.271(1)(C), of the Income tax Act, 1961- Assessment Year 2011-12

Please refer to your return of income filed for the assessment year as referred above. On going through the Return/records it is seen that you have not complied with the provisions of section 271(1)(C) of the Income-tax Act, 1961. You have, therefore, committed a default and as such liable to penalty u/s 271(1)(C) of the Income-tax Act, 1961. You are, therefore, requested to show cause as to why penalty u/s 271(1)(C) should not be imposed.

Your reply should reach this office by 13/02/2014 positively.

In case of failure, your case will be decided on merits.

(Debasish Lahiri)
Joint Commissioner of Incometax,
Range-1, Bilaspur (C.G.)

(DEBASHISH LAHIRI)
Joint Commissioner of Income Tax
Range - 1, Bilaspur (C.G.)

03/02/2014

It may be observed, that the aforesaid SCN, dated 27.01.2014 (supra) was thereafter followed by another SCN, dated 09.07.2015. However,

in the SCN, dated 09.07.2015 also the A.O had failed to point out the specific default for which the assessee company was called upon to explain that as to why it may not be saddled with penalty u/s 271(1)(c) of the Act. Once again, for the sake of clarity, the SCN dated 09.07.2015 (as per Annexure 11 of the assessee's compilation dated 13.03.2019) is culled out as under:

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Deputy Commissioner of Income-tax,
Circle-1(1), Mahima Commercial Complex,
Vyapar Vihar, Bilaspur

PAN:- AADCS2066E

To,

Dated: **09/07/2015**

M/s South Eastern Coalfields Ltd.,
Seepat Road,
Bilaspur (CG)

Whereas in the course of proceedings before me for the assessment year 2011-12. It appears to me that you:-

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under Section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961, No ..... dated ..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under Section 142(1)/1 143(2) of the Income-tax Act, 1961.
No. ..... dated .....

***have concealed the particulars of your Income or furnished inaccurate particulars of such Income.**

You are hereby requested to appear before me at **03:15 P.M.** on **27/07/2015** and show cause why an order imposing a penalty on you should not be made under Section 271 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 show cause in writing on or before the said date which will be considered before any such order is made under Section 271(1)(c).

Dy. Commissioner of Income Tax Circle-1(1), Bilaspur (C.G.)

Assessing Officer
(Rituparn Namdeo)
Dy. Commissioner of Income Tax
Circle 1(1), Bilaspur

As such the aforesaid failure to point out the specific default for which penalty u/s 271(1)(c) was sought to be imposed, viz. "concealment of the particulars of income" or "furnishing of inaccurate particulars of income" was allowed by the A.O to perpetuate in the SCN, dated 09.07.2015 (supra). Insofar the validity of the jurisdiction assumed by the A.O for imposing penalty u/s 271(1)(c) is concerned, we find that the same has been assailed before us on the ground that as the irrelevant default in the aforesaid SCN's dated 27.01.2014 and 09.07.2015 was not struck off by the A.O, therefore, the assessee was not validly put to notice as regards the default for which penalty was sought to be imposed on it under Sec. 271(1)(c) of the I.T Act.

55. We have given a thoughtful consideration to the facts of the case, and are persuaded to subscribe to the claim of the Ld. AR that the A.O in both the aforesaid SCN's dated 27.01.2014 and 09.07.2015 had failed to point out the specific default for which penalty was sought to be imposed on the assessee company. In our considered view, as both the two defaults envisaged in Sec. 271(1)(c), i.e 'concealment of income' and 'furnishing of inaccurate particulars of income' are separate and distinct defaults which operate in their independent and exclusive fields, therefore, it was obligatory on the part of the A.O to have clearly

put the assessee to notice as regards the specific default for which it was being called upon to explain that as to why penalty under Sec. 271(1)(c) may not be imposed on it. As observed by us hereinabove, a perusal of the SCN's issued in the present case by the A.O under Sec. 274 r.w. Sec. 271(1)(c), dated 27.01.2014 and 09.07.2015, clearly reveals that there was no application of mind by the A.O while issuing the same. We are of a strong conviction that the very purpose of affording a reasonable opportunity of being heard to the assessee as per the mandate of Sec. 274(1) of the Act would not only be frustrated, but in fact would be rendered as redundant if an assessee is not conveyed in clear terms the specific default for which penalty under the said statutory provision is sought to be imposed on it. In our considered view, the indispensable requirement on the part of the A.O to put the assessee to notice as regards the specific charge contemplated under the aforesaid statutory provision, viz. "concealment of income" or "furnishing of inaccurate particulars of income" is not merely an idle formality but is a statutory obligation cast upon him, which we find had not been discharged in the present case as per the mandate of law.

56. As we have while disposing off the appeal of the assessee for A.Y.2009-10 in ITA No.156/RPR/2014 dealt with at length on the validity of the jurisdiction assumed by the A.O for imposing penalty u/s.271(1)(c) of the Act on an assessee without pointing out in the "Show cause" notice (SCN) issued u/s.274 r.w.s. 271(1)(c) of the Act the specific default for which penalty was sought to be imposed in its case, therefore, the view therein taken by us will apply *mutatis mutandis* for disposing off the present appeal of the assessee for A.Y.2011-12 in ITA No.144/RPR/2017. Therefore, in the backdrop of our aforesaid observations, as the A.O in the present case also had imposed penalty u/s.271(1)(c) without pointing out in the SCN dated 27.01.2014 and 09.07.2015 the specific default for which the penalty was sought to be imposed, therefore, the penalty of Rs.30904.14 lacs (approx.) is on the same terms and reasoning vacated.

57. That as we have while disposing off the appeal filed by the assessee company in ITA No.144/RPR/2017 had held that the A.O had wrongly assumed jurisdiction u/s.271(1)(c) of the Act, therefore, borrowing the said reasoning and basis the appeal filed by the revenue in ITA No.97/RPR/2017 in absence of valid assumption of jurisdiction by the A.O u/s.271(1)(c) of the Act is on the same terms dismissed. As

the appeal filed by the department is dismissed on the ground of invalid assumption of jurisdiction by the A.O for imposing penalty u/s.271(1)(c) of the Act, therefore, we refrain from adverting to and adjudicating the grounds raised by the department on the basis of which the order of the CIT(Appeals) to the extent he had allowed part relief to the assessee has been assailed by the department before us, and the same, thus, are left open.

58. Resultantly, the appeal filed by the assessee company in ITA No.144/RPR/2017 for A.Y.2011-12 is allowed in terms of our aforesaid observations while for, the appeal filed by the department in ITA No.97/RPR/2017 for A.Y.2011-12 is dismissed.

ITA No.167/RPR/2018 (Assessee's appeal)
A.Y.2012-13

59. We shall now take up the cross-appeals filed by the assessee and the department for A.Y.2012-13. The assessee company has assailed the impugned order passed by the CIT(Appeals) on the following grounds of appeal before us:

> "1. In the facts and circumstances of the case and in law, the ld. Commissioner of Income-tax (Appeals) has erred in not entertaining ground. No.1 raised in the grounds of appeal filed before him on the say that several issues which were subject matter of penalty order were either of concealment of income or furnishing of inaccurate' particulars of income or both;. whereas the learned Assessing Officer

did not define the specific nature of default i.e. whether there was concealment of income or furnishing of inaccurate particulars of income, either in the assessment order or in Show Cause notice issued u/s 274 read with section 271(1)(c) of the Income-tax Act, 1961, such notice and penalty order are contrary to the law approved by the Hon'ble Supreme Court in the case of CIT vs SSA's Emerald Meadows (2016) 73 taxmann.com 248 (SC).

2. In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) has erred in confirming penalty on the disallowance of Rs.134,83,00,000/- made in assessment, which was incurred with respect to acquisition of land an resettlement of land looser.

3. In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) has erred sustaining penalty on the disallowance of Rs.1,90,65,640/- made in assessment with reference to expenditure disallowed u/s 14A of the Income-tax Act, 1961.

4. In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) has erred in confirming penalty on the disallowance Rs.153,75,00,000/- made in assessment with reference expenditure claimed on employees benefits based on actuarial valuation.

5. In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) has erred a confirming penalty on the disallowance of Rs.1,02,22,000/- made in assessment with reference to depreciation claimed on Apollo Hospital Building owned and constructed by appellant.

6. In the facts and circumstances of the case and in law, the learned: Commissioner of Income Tax (Appeals) has erred in sustaining penalty on the disallowance of Rs.3,48,330/- made with respect to depreciation on Computer Software, Expenses which were inc. tided in Miscellaneous Expenses treating capital expenditure.
7. In the facts and circumstances of the case a- Id in law, the learned Commissioner of Income-tax (Appeals) has erred in. sustaining penalty on the disallowance of Rs. 47,00,000/- made with reference to Prior Period Expenses crystallized during relevant assessment year.

8. In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax(Appeals) has erred in confirming penalty on the disallowance of Rs.1,52,00,000/- made on the ground of liquidated damages received for delay in supply of Plant and Machinery.

9. In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) has erred i.e. confirming penalty on the disallowance of Rs.195,30,00,000/- made with reference to amount provided for Mine Closure expenditure.

10. In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) has erred in sustaining penalty on the disallowance of Rs.13,53,32,000/- made with reference to interest on forfeited balances.

11. In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) has erred in sustaining penalty on the disallowance of Rs.662,73,37,000/- made against Overburden Removal Adjustment account.

12. In the facts and circumstances of the case aid in law, the learned Commissioner of Income-tax (Appeals) has erred in sustaining penalty on the disallowance of Rs.64,00,000/- made with reference to deduction claimed u/s 40(a) of the Income-tax Act, 1961.

13. In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) has erred in sustaining penalty on the disallowance of Rs.24,08,00,000/- made against alleged short credit of Interest.

14. In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) has erred ill sustaining penalty on the disallowance of Rs.62,02,000/- made against interest income on terminal tax as per directives of Hon'ble High Courts.

15. In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) has erred in allowing imposition of penalty at 205% on a Central government Enterprise without asserting any special reasons and the penalty order is grossly arbitrary, unjustified and against the settled legal position that penalty u/s.271(1)(c) of the Income-tax Act, 1961 cannot be imposed with respect to disallowances made in assessment.

16. The impugned order is bad in law and on facts.

17. The Appellant reserves the right to add, alter, amend, omit, withdraw any of the grounds of appeal."

Also the assessee has raised an additional ground of appeal before us on 13.09.2019, which reads as under :

> **Additional Ground :**
>
> 12. That the Ld. AO erred in levying penalty under section 271(1)(c) read with section 274 of the Income Tax Act, 1961 without specifying whether it is for "concealment of Income" or for "furnishing of inaccurate particulars of income" in the show cause notice given and therefore, the impugned penalty order dated 04 September 2017 passed by him is bad in law, thus, deserves to be quashed."

On the other hand the revenue has assailed the order of the CIT(A) by raising the following grounds of appeal before us:

ITA No. 170/RPR/2018 (Revenue's appeal)
A.Y. 2012-13

> "1. Whether on the facts and circumstances of the case the Ld. CIT(A) was justified in cancelling the penalty imposed on account of addition of Rs.1,12,81,21,000/- regarding coal transportation by the Ex-servicemen coal transporting companies.
>
> 2. Whether in the facts and circumstances of the case the Ld. CIT(A) was justified in cancelling the penalty imposed on account of addition of Rs.5,22,18,000/- being the expenditure incurred on assets not belonging to the assessee company?
>
> 3. Whether in the facts and circumstances of the case the Ld. CIT(A) was justified in deleting the penalty imposed on account of erroneous claim of TDS amount to Rs.1,25,93,175/-.
>
> 4. The order of the Ld. CIT(A) is erroneous both in law and on facts.
>
> 5. Any other ground that may be adduced at the time of hearing of appeal."

60. Succinctly stated, the assessee company had filed its original return of income for A.Y. 2012-13 on 27.09.2012, declaring an income

of Rs.621543.41 lacs. The return of income filed by the assessee company was processed as such u/s.143(1) of the Act. Thereafter, the assessee company filed a revised return of income on 29.03.2014, declaring an income of Rs.621569.00 lac (approx.). Subsequently, the case of the assessee company was selected for scrutiny assessment u/s.143(2) of the Act.

61. Original assessment was thereafter framed by the A.O vide his order passed under Sec.143(3) of the Act, dated 30.01.2015, wherein the income of the assessee was assessed at Rs.778416.95 lacs after, inter alia, making certain additions/disallowances, which after being scaled down by the CIT(A) remained as under :-

S. No.	Particulars	Amount (Rs.in lakhs)
1.	Disallowance of land compensation and rehabilitation expenses	13483.00
2.	Disallowance of expenses u/s.14A of the Act	190.65
3.	Disallowance of provisions as per actuarial	15375.00
4.	Disallowance of depreciation on Apollo hospital building	102.22
5.	Disallowance of miscellaneous expenditure (depreciation on computer software)	3.48
6.	Disallowance of prior period expenses	47.00

7.	Addition of LD penalty received by the Assessee by recharacterizing it as a revenue receipt	152.00
8.	Disallowance of provision for mine closure	19530.00
9.	Disallowance of interest paid to others (LANCO BG)	1352.32
10.	Disallowance of overburden removal expenses	66273.37
11.	Disallowance of expenses u/s.40(a)(ia) of the Act.	64.00
12.	Addition on account of short credit of interest income (on disputed deposits)	2408.00
13.	Disallowance of interest paid on terminal tax	62.02
14.	Addition due to mismatch in TDS credit	125.93
15.	Disallowance of payment made to ESM transporters	11281.21
16.	Disallowance of expenditure on assets not belonging to the assessee company	1044.35

62. The A.O while framing the assessment vide his order passed under Sec.143(3) of the Act, dated 30.01.2015 had also initiated penalty proceedings under Sec.271(1)(c) of the Act for furnishing of inaccurate particulars of income and, also without referring to any specific default w.r.t. the additions/disallowances made in the hands of the assessee company, which for the sake of ready reference are culled out as under:

S. No.	Particulars	Mention of limb for initiating penalty in quantum assessment order dated 30.01.2015 passed u/s.143(3) of the Act.
1.	Disallowance of land compensation and rehabilitation expenses	No specific limb has been invoked while initiating penalty proceedings (AO's remark in the assessment order-"Penalty u/s.271(1)(c) of the Act is separately initiated.
2.	Disallowance of expenses u/s.14A of the Act	
3.	Disallowance of provisions as per actuarial	
4.	Disallowance of depreciation on Apollo hospital building	
5.	Disallowance of miscellaneous expenditure (depreciation on computer software)	
6.	Disallowance of prior period expenses	
7.	Addition of LD penalty received by the Assessee by recharacterizing it as a revenue receipt	
8.	Disallowance of provision for mine closure	
9.	Disallowance of interest paid to others (LANCO BG)	
10.	Disallowance of overburden removal expenses	
11.	Disallowance of expenses u/s.40(a)(ia) of the Act.	
12.	Addition on account of short credit of interest income (on disputed deposits)	
13.	Disallowance of interest paid on terminal tax	
14.	Addition due to mismatch in TDS credit	For "furnishing of inaccurate particulars of income"
15.	Disallowance of payment made to ESM transporters	No specific limb has been invoked while initiating penalty proceedings (AO's remark in the assessment order-"Penalty u/s.271(1)(c) of the Act is separately initiated.
16.	Disallowance of expenditure on assets not belonging to the assessee company	

Also, the A.O issued a "Show Cause" notice (SCN) u/s.274 r.w.s. 271(1)(c) of the Act dated 31.01.2015.

63. After the order passed by the CIT(A), dated 24.10.2016 disposing off the quantum appeal of the assessee, the A.O vide a SCN, dated 11.08.2017 called upon the assessee company to explain that as to why penalty under Sec.271(1)(c) of the Act may not be imposed on it w.r.t. the additions/disallowances that were sustained by the CIT(A). As the reply filed by the assessee did not find favor with the A.O, therefore, he vide his order passed under Sec.271(1)(c) of the Act, dated 04.09.2017 saddled it with a penalty of Rs.81050.49 lacs both for furnishing of inaccurate particulars of income; and also without referring to any specific default w.r.t the aforementioned respective additions/disallowances, as under:

S. No.	Particulars	Mention of limb for levying penalty in Penalty order dated 04.09.2017
1.	Disallowance of land compensation and rehabilitation expenses	For "furnishing of inaccurate particulars of income"
2.	Disallowance of expenses u/s.14A of the Act	No specific limb has been invoked while imposing penalty

3.	Disallowance of provisions as per actuarial	For "furnishing of inaccurate particulars of income"
4.	Disallowance of depreciation on Apollo hospital building	For "furnishing of inaccurate particulars of income"
5.	Disallowance of miscellaneous expenditure (depreciation on computer software)	For "furnishing of inaccurate particulars of income"
6.	Disallowance of prior period expenses	For "furnishing of inaccurate particulars of income"
7.	Addition of LD penalty received by the Assessee by recharacterizing it as a revenue receipt	For "furnishing of inaccurate particulars of income"
8.	Disallowance of provision for mine closure	For "furnishing of inaccurate particulars of income"
9.	Disallowance of interest paid to others (LANCO BG)	For "furnishing of inaccurate particulars of income"
10.	Disallowance of overburden removal expenses	No specific limb has been invoked while imposing penalty
11.	Disallowance of expenses u/s.40(a)(ia) of the Act.	For "furnishing of inaccurate particulars of income"
12.	Addition on account of short credit of interest income (on disputed deposits)	No specific limb has been invoked while imposing penalty
13.	Disallowance of interest paid on terminal tax	No specific limb has been invoked while imposing penalty
14.	Addition due to mismatch in TDS credit	No specific limb has been invoked while imposing penalty
15.	Disallowance of payment made to ESM transporters	For "furnishing of inaccurate particulars of income"
16.	Disallowance of expenditure on assets not belonging to the assessee company	No specific limb has been invoked while imposing penalty

64. Aggrieved, the assessee assailed the order passed by the A.O under Sec.271(1)(c) of the Act, dated 04.09.2017 before the CIT(A), who partly sustained the order of the A.O, observing as under :-

> "1. On the facts and circumstances of the case the levy of entire penalty amounting to Rs. On the facts and circumstances of the case the entire penalty amounting to Rs 810,50,49,000/- is erroneous and void ab initio as all the additions on which penalty has been imposed are actually on debatable matters and do not constitute furnishing of inaccurate particulars of income by the appellant company.
>
> After giving effect to the appellate order, the AO issued notice u/s 274 r.w.s. 271(1)(c) of the Act to explain why penalty should not be imposed for concealing /furnishing inaccurate particulars in the return of income. Consequent upon the notice written reply was submitted. The AO did not accept the explanation for the following reasons:
>
> (i) As regards claim for land compensation and rehabilitation, the AO has treated it as capital expenditure and this stand of the Department was upheld by the Appellate Authorities (upto Tribunal) in earlier years also. By claiming the deduction under the garb of revenue expenditure is tantamount to furnishing of inaccurate particulars.
>
> (ii) As regards the other additions like payment of transporter, it is evident from the records that assessee could not produce the details as required by the AO. Therefore, the AO has disallowed the expenditure. Non-maintenance of proper details goes to prove that assessee is furnishing inaccurate particulars of its income.
>
> (iii) As regards assets not belonging to the assessee, it was observed by the AO that roads constructed by the assessee were not exclusively meant for the purpose/use of employees of the assessee company only but the common public at large. This is sufficient to prove that assessee is concealing its particular of income by claiming wrong deduction.
>
> From the above observation, the AO held that the appellant company has not shown its correct income and escaped tax otherwise payable by it and that it was established in course of earlier assessment years that such type of expenses are not allowable expenses but the appellant company is repeatedly claiming the expenses every year to reduce tax liability and to conceal its true and correct income. Having being satisfied with his observation that the

appellant company has committed default within the meaning of section 271(1)(c), the AO held that the appellant company is liable for penalty on tax sought to be evaded at Rs.394,10,89,265/- and accordingly, imposed minimum penalty of Rs.395,36,82,441/- including Rs1,25,93,175/- on account of denial of TDS credit. vide the above order. in the course of written reply was submitted. The main contention of the appellant is that in case of the claims not entertained by the department, penalty cannot be levied. In respect of two specific issues, the appellant has taken the pleas that these should be deleted as these were deleted in earlier year's appeals. These issues are expenses incurred on coal transportation by ESM companies and expenses incurred on assets not belonging to the assessee company.

The appellant has also raised technical objection that in the notice u/s 274 the relevant paras have not been marked under which the penalty proceedings have been initiated. On this objection I find that several issues are subject matter of the penalty order and under these issues there is either concealment of income or furnishing of inaccurate particulars or both. Therefore all the clauses of the said notice are applicable in case of the appellant.

2. Expenses on land and resettlement:

Ground: On the facts and circumstances of the case the levy of the penalty of the amount of Rs.134,83,00,000/- on expenditure incurred by the appellant on acquisition of land and resettlement of land looser is erroneous and bad in law and requires to be deleted.

This issue is having past litigation and my Ld. Predecessor had confirmed the addition made by the AO by observing the factual position, the factual position as narrated by my predecessor reads as under:

The Ld. AR submitted that looking to the nature, the expenditure incurred on obtaining lease hold lands from State Governments for mining purposes and expenditure on land compensation and rehabilitation of villagers has been consistently claimed as revenue in nature. The Hon'ble ITAT, Nagpur Bench decided this debatable and legal issue in favour of revenue for A.Y. 1994-95, A.Y. 1995-96 and A.Y. 1996-97 and on the basis of the order of the Hon'ble Tribunal, similar disallowance has been made every year since A.Y. 1997-98. No penalty was initiated in the earlier year against the addition made out of disallowance of the aforesaid expenditure, but the Ld. AO initiated/imposed penalty against the addition in A.Y. 2008-09 and 2009-10.

The Ld. AR invited reference to order of the Appellate Tribunal, Nagpur in Page No. 35 to 41 which indicate that the Bench discussed various judgment of the Apex Court as well as judgment of various High Courts placed in favour of appellant company before coming to conclusion this indicates that the issue is highly debatable and legal in nature. The addition made in the subsequent years including year under reference was confirmed by CIT(Appeals) after respectfully following this decision of the Hon'ble Tribunal. There is no definition given in the Act to what is capital or revenue expenditure. It is determined from the circumstances and facts of the case as well as commercial prudence. This issue is a legal issue and there are various judgment wherein such expenses are held to be of revenue expenditure. The appellant company has filed appeal against the impugned order of Hon'ble ITAT, Nagpur Bench and it is pending before the Hon'ble High Court of Chhattisgarh for adjudication.

The appellant company claimed expenditure representing payment made to State Government to acquire surface right as well as the right to possession in respect of lease hold land for a longer period and for incurring expenditure pertaining to rehabilitation of people in course of obtaining the use of land for mining purposes as revenue expenditure. The AO observed that the appellant company claimed the expenditure as revenue in nature because the company has not become the owner of the land, but merely obtained the right to mine coal situated at that area. The appellant company preferred appeal before the CIT(Appeal), Bilaspur and Hon'ble ITAT, Nagpur Bench, Nagpur. The issue was decided in favour of the Revenue vide order of the Hon'ble Tribunal in ITA No. 18-22/Nag/2001 dated 28-02-2002. The appellant company has preferred appeal before the Hon'ble High Court of Chhattisgarh against the impugned order of Hon'ble Tribunal, which is pending for adjudication. However, the appellant company has been consistently claiming the expenditure as revenue in nature in the return of income filed up to the A.Y. 2009-10 and the AO has been denying the expenditure as inadmissible being capital in nature every year by placing reliance on the decision of the highest fact findings authority as well as in the ratio of the case in Sitalpur Sugar Works Vs. CIT reported in 49 ITR 160 (SC); International Airport Authority of India Vs. CIT reported in 254 ITR 657 (Del); Hardillia Chemicals Ltd Vs. CIT reported in 218 ITR 598 (Born); Jagmohan Rao Vs. CIT reported in 75 ITR 373 (SC). The order of the AO is being sustained by the First Appellate Authority by respectfully following the above decision of the jurisdictional Tribunal.

The Hon'ble Tribunal analyzed the claim on the basis of aim and object of the expenditure as well as resultant advantage to characterize whether the concerned expenditure is capital and

revenue in nature by referring to decision of the Hon'ble Apex Court in the case of Bikaner Gypsums Ltd. Vs. CIT, the appellant company acquired the surface right from Government in terms of the lease agreement for using the said land for its surface operation for a long period of lease which itself is a long term period. After acquiring such surface right in respect of lease hold land, the appellant company acquires the right to possession of the said land from the villager who were occupying the said land, for this purpose, the appellant company spent the alleged sum for relocating and rehabilitating the said villagers. The Hon'ble Tribunal discussed case laws relied on by the appellant company like CIT Vs. R.J. Trivedi; Gotan Line Syndicate Vs. CIT; Madras Auto Services Limited Vs: CIT; Associated Cement Company Limited Vs. CIT and distinguished the ratio from the facts and circumstances of the case in hand. The Hon'ble Tribunal discussed the ratio of the case in Assam Bengal Cement Company Limited Vs. ell; N. Peer Saheb Vs. CIT; Chloride India Limited Vs CIT; Lucky Bharat Garage Vs. CIT; R.B. Seth Moolchand Sugandhchand Vs. CIT and finally concluded that the impugned expenditure incurred by the appellant company for acquiring surface right as well as the right to possession in respect of lease hold land for engineering period is a capital expenditure and affirm the order of CIT(Appeals), Bilaspur confirming the addition made by the AO by treating the same as capital expenditure. The appellant company has preferred appeal against the impugned order of Hon'ble Tribunal before Hon'ble High Court of Chhattisgarh and it is pending for adjudication.

Regarding claim of "Land Compensation and Rehabilitation Expenses" as revenue expenditure, the Hon'ble Tribunal has held the expenditure as capital in nature. But, the appellant company has been consistently claiming it as revenue expenditure. Even after finality of the fact, continuity in incorrect claim in law for expenditure on land compensation and rehabilitation which has resultant effect of reducing the taxable income to that extent and thus, it amounts to giving inaccurate particulars of income in the return. The explanation offered by the appellant company is neither bonafide nor substantiated. Reliance is placed in the decision of A.M. Shah Vs. CIT 238 ITR 415 (Guj); CIT Vs. Smt. P.K. Kocharnmu Anna, Peroke 125 ITR 624; ACIT Vs. Khanna & Annadhnarn 142 TTJ 1 (Del) and it is held that penalty for furnishing such inaccurate particulars of expenses attracts penalty u/s 271(1)(c) of the Act.

The position of law emerging from the factual matrix of the case in Reliance Petro Products Pvt. Ltd Vs. CIT is that the addition made by the AO in respect of the interest claimed as a deduction u/s 36(1)(iii) of the Act was deleted by the CIT(A) because it had already been disallowed and added in earlier years and the assessee was under bonafide belief that on the payment basis it was allowable in

later years. The Hon'ble Tribunal restored the issue to the file of the A.O. The appeal filed by the assessee against the order of the Tribunal was admitted by the High Court. It was, in these circumstances that the Hon'ble Apex Court concluded the assessee had neither concealed the income nor filed inaccurate particulars thereof: This, however, is not the factual position in the case in hand and the facts of the present case are clearly distinguishable. It is true that mere submitting a claim which is incorrect in law would not amount to giving inaccurate particulars of income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be bonafide. If the claim besides being incorrect in law is malafide, Explanation-1 to Section 271(1) come into plays and works to the disadvantage of the appellant company.

In the given facts and circumstances of the case and legal propositions, it is held that the explanation furnished by the appellant company justifying deduction on Land Compensation and Rehabilitation Expenses is not bona fide or substantiated and hence, presumption in Explanation-1 to section 271(1)(c) is attracted. The penalty imposed against the addition is confirmed for furnishing inaccurate particulars of income in the return."

3. <u>Disallowance of interest u/s.14A</u> :

Ground : On the facts and circumstances of the case the levy of the penalty of the amount of Rs.190,65,640/- determined u/s.14A bad in law as the interest earned is on tax free bonds and on mutual funds without any cost to the company and requires to be deleted.

Assessee had made substantial investments under the head shares & securities of Rs.59968.00 lakh, income from which did not form part of income. Assessee has tax free dividend of Rs 951.00 lakh from the above investment. Assessee has not disallowed proportionate expenses from its accounts. Assessee's business is production/extraction of coal. If it has involved in investments, there has to be devoted man, material and management to handle these investment and expenses has been incurred on them. Assessee has not bifurcated these expenses and setoff against the tax fee dividend. When the appellant has invested in the investments earnings from which are tax exempt, and appellant has claimed exemption on dividend received and the exemption was allowed, not allocating the expenses related to earning of such income is deliberated and calls for penalty. The same is sustained.

4. Coal transportation:

Ground: That on the facts and circumstances of the case the imposition of penalty on the amount incurred by the appellant company for Rs.112,81,21,000/- on coal transportation by the Ex-Servicemen coal transporting companies is without any basis and on erroneous belief that the rates are high. Pray for deleting the same.

This issue is having past litigation and my Ld. Predecessor had confirmed the addition made by the AO by observing the factual position, the factual position as narrated by my predecessor reads as under:

Induction of Ex-Servicemen Transport Companies was done at the behest of Government of India long time back to break the transport cartel in Bharat Cooking Coal Limited and Central Coalfields Limited both being subsidiary of Coal India Limited. Later on and on the basis of sponsorship from the Director General of Resettlement, Ministry of Defence, it was extended to other subsidiaries of CIL including SECL, the appellant company. ESM companies are engaged for coal transportation from coal faces were no civilian transporters are engaged. ESM companies do not charge rates of their own. Normative rates fixed by the company as per guidelines of Price Water House Coopers, an international consultancy firm of repute are being charged according to distance and load transported. During the year, the appellant incurred an amount of Rs. 42045.01 lakhs towards coal transportation carried out by the ESM coal transporting companies. The AO disallowed 50% of the said expenditure on adhoc basis on the ground that there is allegation level against the company that rates paid to ESM companies are on higher side. It is worthwhile here to mention that these allegation of the Department persists from the A.Y. 1998-99 and after expiry of so many assessment years, no facts has been brought out by the Department that these allegations are true. The disallowance continues on the basis of only allegation as recorded in the assessment order. Disallowance is made totally on unsubstantiated fact and arbitrarily arriving at 50% of expenses. There is nothing on record to prove that the appellant company has filed any inaccurate particulars on this issue so as to impose penalty u/s 271(1)(c) of the Act. The Hon'ble CIT(Appeals), Bilaspur in its relevant appellate order stated that though the appellant's claimed in the above matter cannot be accepted in its entirety, yet at the same time the estimated disallowance made by the AO is on the higher side. Under the circumstances, the disallowance in respect of the above expenditure was reduced to 25% of the total claim or in other words, 50% of disallowance made by the AO was granted as relief. Needless to mention that the company is in appeal before the ITAT, Raipur Bench for the balance amount and appeal preferred is at present pending for adjudication. It is pertinent here to mention that similar

disallowance and part relief by Hon'ble CIT(Appeals) are continuing from past several assessment years, yet no penalty u/s 271(1)(c) has been initiated/imposed till A.Y. 2007-08 by the Department because of the reason that there is no inaccurate particulars filed by the appellant company in the return of any of the earlier years.

The Ld. AR placed reliance in the decision in CIT Vs. Reliance Petro Products (P) Limited 322 ITR 158; CIT Vs. Sivananda Steels Limited 256 ITR 683 (Mad); CIT Vs. Dhoolie Tea Co. Ltd. 231 ITR 65 (Cal); Township Read Estate Developers (India) (P) Ltd Vs. ACIT 21 taxman.com 63 (Mum) and submitted that there is no element of either concealment of income or furnishing of inaccurate particulars of income in the return in view of provisions of section 271(1)(c) and hence, penalty imposed by the Ld. AO against the additions is incorrect and liable to be quashed.

In another submission, the Ld. AR placed reliance in the case of Blip Shroff 291 ITR 519 (SC); Dharmendra Textile Processors 306 ITR 277 (SC); CIT (Central-1) Vs. Jackson Ltd. in ITA 48/2013 and ITA 49/2013 of Hon'ble High Court of Delhi; M/s. Gopi Cold Storage Pvt. Ltd. Vs. CIT (Central-1), Kolkata in Appeal No. 71/2011 of Hon'ble Kolkata High Court; Price Water House Coopers Vs. CIT of Hon'ble Apex Court and submitted that details supplied by the appellant company in its return were not found to be incorrect or erroneous or false and hence, penalty is not sustainable. Further, the Ld. AR submitted that the appellant company is a Government Company and its Directors or other employees were not connected with sharing of profits. They were only interested in running the affairs of the company. Therefore, no motive could be attributed to the Directors or employees for reduction or suppression of profits for purpose of evading tax. It is case of one Government Department paying tax to the other Government Department and therefore, there could be no intention to suppress the profit for evasion of tax. In this regard, the Ld. AR placed reliance in the case of H.P. State Forest Corporation Limited Vs. DCIT 93 ITD 442 (Chill); ITO Vs. Hindustan Petroleum Corporation Limited 16 ITD 574 (Mum); Indian Petro Chemicals Pvt. Ltd. Vs. JCIT, Range-3, Baroda 123 ITD 293 (Ahd).

The appellant company claimed contractual expenses being payments made to transporters for transportation of coal coke, sand and other items. This includes payment to Ex-Service Man Companies for transportation work got done through them. The AO observed that necessary details such as quantity transported and rates charged by the ESM companies alongwith their names and addresses could not be furnished. This information was also required by the Department in the light of the fact that there are allegations levelled against the company to the effect that the assessee company had paid loading and transportation charges to the ESM companies

at a very higher rate i.e. almost 70% to 80% more than that of other (Non-ESM) companies. Relying on the reasons recorded in the assessment orders on this issue for the Asst. Yrs. 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 & 2008-09, he disallowed 50% of the expenses booked under this head i.e. transportation charges paid to the ESM companies treating the same as payments made for non-business purposes and added the amount to the total income declared in the return filed.

The 1st Appellate Authority discussed the issue at length and finally held that in absence of complete and verifiable details, the AO has to resort to same estimates for allowance/disallowance of a particular expenditure, which has also been done in the present case by the AO by disallowing 50% of the total expenses. However, the addition was restricted to 50%.

After considering the explanation furnished by the appellant company, the AO imposed penalty under the aforesaid section for furnishing inaccurate particulars of income in the return and concealing its particulars of income by claiming wrong deduction. The defense of the appellant company is that full and true disclosure in computation of income which is accompanied to the return of income has been made and hence, there is neither concealment nor inaccurate particulars of income filed within the meaning of section 271(1)(c) of the Act.

Section 271(1)(c) of the Act provides for imposition of penalty in case the AO, in the course of any proceedings under the Act, is satisfied that any person has concealed particulars of his income or has furnished inaccurate particulars of such income. Explanation-1 to Sub section (1) to Section 271 of the Act provides that where in respect of any facts material to the computation of the total income of any person, such person fails to offer an explanation or offers an explanation which is found to be false or he offers an explanation, which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of its total income, have been disclosed by him, then the amount added or disallowed in computing the total income of such person as a result thereof, shall, for the purpose of clause (c), be deemed to represent the income in respect of which particulars have been concealed. Thus, in the case of failure of the assessee to offer any explanation or explanation furnished by him being found false, penalty may be imposed on him. However, if the assessee offers an explanation, mere failure on his part to substantiate it will not be enough to warrant penalty, if the explanation is bonafide, and all the facts relating to the same were disclosed by him in the return. Explanation-1 to Section 271(1)(c)

would be inapplicable in respect of any amount added or disallowed as a result Of rejection of the explanation furnished by the assessee, provided that his explanation is shown to be bonafide and all the facts relating to the same and material to the computation of total income was disclosed by him. The position of law, thus emerges is that so long as the assessee has not concealed any material fact, or the factual information given by him has not been found to be incorrect, he will not be liable to imposition of penalty u/s 271(1)(c) of the Act, even if the claim made by him is unsustainable in law, provided that the either substantiated explanation offered by him or the explanation offered by him, even if not substantiated, is found to be bonafide. In other words, if the explanation is neither substantiated nor shown to be bonafide, Explanation-1 to Section 271(1)(c) would come into play and the assessee will be liable to penalty leviable u/s 271(1)(c) of the Act in respect of the additions or disallowances made by the AO in the assessment.

The expression used in clause (c) is "has concealed the particulars of his income" or "furnished inaccurate particulars of such income". Therefore, both in cases of concealment and inaccuracy, the phrase "particulars of income" is used. It will be noted that as regards concealment the expression in clause (c) is "has concealed the particulars of his income" and not "has concealed his income". It is obvious that the penal provisions would operate when there is a failure of duty, to disclose fully and truly particulars of income, imposed under the Act and the Rules thereunder. The duty is enjoined upon a person to make a correct and complete disclosure of his income and it is only when he fails in his duty by not disclosing his income or part thereof, he conceals the particulars of his income. The duty is enjoined upon him to make a complete disclosure of his income as well as a correct disclosure. Therefore, if the disclosure made of the particulars of income is incorrect, then also be commits breach of his duty. Such defaults entail the penal consequences contemplated by s. 271(1)(c)(iii) of the Act.

Under s. 139(1) of the Act, it is inter alia provided that every person, if his total income in respect of which he is assessable under the Act during the previous year, exceeded the maximum amount which was not chargeable to income-tax, shall furnish a return of his income in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed. It is, therefore, obligatory on a person whose total income exceed the maximum amount which was not chargeable to income tax, to furnish a return of his income during the 'previous year', in the prescribed form. Such return is required to be verified in the prescribed manner. Not only is he obliged to furnish return of his income, meaning thereby to disclose fully and truly all his income, but he is also

required to set forth 'other particulars' as may be prescribed. The word 'prescribed' as defined by s. 2(33) of the Act means, 'prescribed by the Rules under the Act'. The forms are accordingly prescribed by the Rules framed under the Act. Section 140 of the Act lays down as to by whom such return can be signed and verified. It will, thus, be seen that the form of return of income included a variety of particulars to be disclosed and the particulars of income to be disclosed can be seen against the items which related to disclosure of income besides particulars other than those which related to the income of the assessee, such as his name, address, status etc. The forms of returns are obviously prepared in the context of the duty of a person to disclose his income from various sources under various heads of income as statutorily provided and his duty to disclose his total income in the return. The extent of his total income will determine the total income-tax liability of a person. "Total income" is defined in s. 2(45) of the Act and it means the total amount of income computed in the manner laid down in the Act. Thus, for arriving at the total income, the income derived from all sources is to be considered as provided by section 5, when it is received or deemed to be received by a person. All income for the purpose of charge of income-tax and computation of total income is required to be classified under distinct heads of income such as salaries, income from house property, profits and gains of business or profession, capital gains and income from other sources.

Thus, under each head of income, there are provisions for deductions which are to be made while computing the income chargeable under that head. It, therefore, follows that it is an obligatory duty cast upon a person filing the return of income to disclose all his income derived from any source under various heads and indicate the income under each head, which is chargeable to income-tax, after making the permissible deductions. Disclosure of income would be disclosure of particulars of income, which a person is duty-bound to disclose in fulfilment of his statutory obligations to pay tax on the income chargeable to tax.

It is in the background of discharge of these statutory obligations of an assessee to fully and truly disclose his income under various heads and indicate the income under those heads which is chargeable to income-tax after making permissible deductions, applicability of provisions of section 271(1)(c) is to be viewed. If a person obliged to furnish the particulars of his income, omits to furnish them, he thereby conceals the particulars. This concealment may take various forms like non-disclosure of particular head of income. The obligation is not only to disclose particulars of income but to disclose them correctly and completely. If, while disclosing the particulars of income in the return, he puts them under a wrong head,

he can be said to be furnishing inaccurate particulars of income. The particulars of income can be made inaccurate in variety of ways, a glaring illustration of which would be where the assessee, while stating the income under a particular head, works out the income chargeable to tax after making deductions which are falsely made. Such a process would make the particulars of income inaccurate. In such cases, whether the income is not disclosed against the constituent item of the return in which it falls or is partly not disclosed, or the particulars of income given in the return are incorrectly stated by any machination, the impact is bound to be on the figure of gross total income to be mentioned under various heads of income and also on the total income chargeable to tax. In fact, reducing the figure of income that would be chargeable to tax would be the purpose of concealment of particulars of income or giving inaccurate particulars of income. The expression "particulars of income" would have relevance to all the particulars of income which the assessee is required to give in his return fully and truly including the particulars of income chargeable to tax under various heads and the total income. Therefore, any concealment or inaccuracy in the particulars of income in the return occurring at any stage upto and inclusive of the ultimate stage of working out of total income would attract the penalty provision of s. 271(1)(c) of the Act. Every figure in the return which is set opposite to the item of income is a particular of income, whether the figure is one which is stated independently of anything else that appears in the return or the documents accompanying it or whether it is something derived from other figures elsewhere stated in such return or documents. False result may be produced by the falsity of one or more of the constituent items in the return. The words inaccurate particulars would cover falsity in the final figure as also the constituent elements or items. They simply would mean inaccurate in some specific or definite respect whether in the constituent or subordinate items of income or the end result. [Relied on A.M. Shah Vs. CIT 238 ITR 415 (Guj)].

Coming back to the case of the appellant company, the reasons for addition were the failure on the part of the company to furnish details of expenses with proper evidence and though the additions are confirmed partially by the 1st Appellate Authority, I find that there is neither the element of concealment of income nor any inaccurate particulars of income furnished in the return. The AO has not brought out any falsity or bogus claim of expenditure incorporated under the above heads of expenses. Therefore, it is found that the submission of the Ld. AR is acceptable and hence, no penalty under the aforesaid section is imposable against such addition.

"The appellant company has preferred appeal before the hon'ble Tribunal against the order of CIT(Appeals), Bilaspur

confirming the additions partially, but there is no specific request from its side to keep the penalty proceedings against the impugned penalty order pending till disposal of the quantum appeal before the hon'ble Tribunal. However, the reasons for addition were the failure on the part of the company to furnish details of expenses with proper evidence and thought the additions are confirmed partially be the 1St appellate Authority, I respectfully follow the decision of my learned predecessor in cases of earlier years who held that there is neither the element of concealment of income nor any inaccurate particulars of income furnished in the return by the assessee and the AO has not brought out any falsity or bogus claim of expenditure incorporated under the above heads of expenses. Therefore, it is found that the submission on the ld. AR is acceptable and hence, no penalty under the aforesaid section is imposable against such addition. Thus the penalty imposed by the learned AO in the issue of payments made to the ESM by the company is not for business purpose is hereby cancelled.

5. Claim of provision on the basis of actuarial valuation:

Ground: That on the facts and circumstances of the case, the imposition of penalty on the amount of Rs.153,75,00,000/- being the actuarial valuation of employees benefits is bad in law and requires to be deleted.

The issue has been discussed by the AO in para 4.4 of penalty order and since the addition had been confirmed by the first appellate authority following his worthy predecessor after thoroughly distinguishing the decisions cited by the learned AR. The AO held that the assessee is creating provisions as per actuarial valuations against various head of expenses. The assessee is doing as per AO as is being done by Coal India Ltd., the holding company. During penalty proceedings the learned AR could not substantiate the provision made by the company and the basis to reach at the actuarial valuation. Since this is a self made procedure adopted by the assessee, which has no basis and also no past history of such valuation the additions had been confirmed during appellate proceedings. The issue whether it is equal to filing inaccurate particulars of income or not depends on the basis of valuation itself which could not be explained by and substantiated by the learned AR of the assessee. During appellate proceedings also there was no effort made by the company to so the basis for valuation to reach at actuarial valuation. Appellant company is an established company own by the GOI and has a vast setup. It is well aware of the fact that under IT Act, only actual expenses are allowed and not the provisions for expenses. Therefore claiming of provisions as actual debits for its income is deliberate. Actuarial valuations may be justified for keeping

the funds in readiness for payment to retiring employees. However claiming the such provision as expenses is merely with the aim of reducing income and the taxes thereon. I do not find any infirmity in the satisfaction of the AO for imposition of penalty on this issue, thus to this extent the penalty is confirmed and the ground of appeal is dismissed.

6. Claim of depreciation on Apollo building:

Ground: That on the facts and circumstances of the case the penalty imposed on the amount of Rs.1,01,22,000/- being the depreciation on Apollo Hospital 'buildings is void and bad in law as the hospital building is owned and constructed by the appellant and therefore, requires to be deleted.

The AO has discussed the issue in para 4.5 of penalty order. It is a fact that hospital is run in a building which may be called as House Property. The man power is required to the run the Hospital in the form of Doctors and Paramedical Staff. The assessee has claimed that the Hospital Building attracts depreciation. In the quantum appeal it had been held that it is only house property income because the assessee is deemed owner of the building and business of the assessee is the mining and trading of the coan and not to run the hospital. Since there is no nexus between running's of hospital for the public, mere referential treatment of the employess of the company if entertained by the hosptital named as Apollo Hospital, the assessee can not slip in the shoes of the persons who are technically qualified for running the hospital. The claim of depreciation certainly equates with filing of inaccurate particular of income. The penalty imposed by the AO on this amount is hereby confirmed. The ground of appeal is dismissed.

7. **Claim of depreciation on computer software**:

Ground: That on the facts and circumstances of the case the penalty imposed on the amount of Rs.3,48,330/- being the depreciation on computer software is erroneous and requires to be deleted.

Computer software expenses is capital expenditure eligible for depreciation @60%. However the appellant has claimed this as revenue expenditure and included under the head Misc Exp Rs 5944.00 lakh. The penalty is sustained.

8. **Claim of prior period exp**

Ground: That on the facts and circumstances of the case the imposition of penalty on the amount of Rs.47,00,000/- being the prior period expenses crystalized during the relevant assessment year is erroneous and requires to be deleted.

The assessee has claimed this amount as pertaining to earlier years. However the clarification submitted by the assessee bore no force as assessee has failed to submit details of these expenses year wise. Assessee has no evidence for the expenses. The penalty imposed is hereby sustained.

9. Claim of TDS :

Ground: That on the facts and circumstances of, the case the levy of penalty on the claim of TDS amount of Rs.1,25,93,175/- is, erroneous and bad in law and requires to be deleted.

The assessing Officer has imposed penalty for claiming TDS. The fact is that assessee had not disclosed the income but claimed TDS on the ground that such income has been reversed. In my considered view Rule 37BA is clear about giving credit to the TDS but the AO is not empowered to impose penalty for bogus claim of TDS because he does not have jurisdiction of the matter of TDS issues. The penalty is cancelled on this issue but the AO has to be freed by the appellate authority to refer the issue to the TDS wing so as the suitable action may be taken by the AO of TDS wing.

10. **Claim of liquidated damages**:

Ground: That on the facts and circumstances of the case the imposition of penalty on the amount of Rs.1,52,00,000/- being the liquidated damage penalty received is actually a capital receipt but treated as revenue receipt is bad in law and requires to be deleted.

The AO has discussed the issue in para 4.9 of his assessment order. The issue had been decided by my worthy predecessor who held the LD penalty as receipt of capital in nature because assessee could not furnish the details for delay in supply of machineries. Since the amount has been treated as capital in nature for failure during appellate proceedings even substantiating the claim, I find no infirmity in the order of the AO on this issue the penalty imposed by the AO on this account is hereby confirmed and the ground of appeal is dismissed.

11. Provision for Mine closure expenses:

Ground: That on the facts and circumstances of the case the imposition of penalty on the amount of Rs.195,30,00,000/- being the amount provided for Mine closure expenditure is erroneous and bad in law and requires to be deleted.

It is true that assessee is a public sector company. The provision of concealment speak about filing of inaccurate particulars of income and in recent unreported judgement the Hon'ble Apex Court has upheld penalty imposed by the revenue on the public sector company. The income tax does not distinguish the private or public company. The argument of learned AR lacks force. The ground of appeal is dismissed.

12. Interest to others:

Ground: That on the facts and circumstances of the case the levy of penalty on the amount of Rs.13,53,32,000/- being the interest to others is erroneous and requires to be deleted.

The issue has been discussed in the assessment order by the learned AO and clearly understood during appellate proceedings. The assessee had received trading advances from certain persons who were found later on by the company as involved in the fraud. The amount had been forfeited by the company and the affected person instigated the issue up to Supreme Court. The Honble Apex Court had directed that the amount be returned to the persons. The amount had been placed in the custody of Collector of district Sahdol who after his best effort could not find out the persons and finally the amount had been given back to the company. Since the amount had been received as trade advance and not as capital advance the forfeiture of such amount with the provision of law of limitation became effective and interest accrued thereon has to be income of the assessee because by way of forfeiture and by operation of law of limitation the said amount as well as interest thereon has become income of the assessee. I do not find any infirmity in the satisfaction recorded by the AO for imposition of penalty. The penalty imposed by the AO on this issue is confirmed and ground of appeal is dismissed. The expenditure has been claimed even though it has not been incurred. On the contrary, the decision of lower court is in assessee's favour, thus negating any kind of liability on the assessee. Not to say it as an incurred liability, it is not even a contingent liability. The penalty is sustained and ground is dismissed.

13. OB removal:

Ground: That on the facts and circumstances of the case the imposition of penalty on Rs.662,73,37,000/- being the

Overburden Removal Adjustment account is erroneous and bad in law as without removing the overburden, the coal seam will not be exposed for the purpose of coal extraction. Pray for deleting the same.

The assessee company has concealed its income by furnishing inaccurate particulars of income. The issue has arisen in earlier year also and my predecessor the Ld. CIT(A) Bilaspur has sustained the addition. The claim of capital expenses as revenue has been made thus depicting an expenditure as revenue with an intent to reduce the income. The penalty is sustained.

14. **Expenses on Assets not belonging to company**:

Ground: That on the facts and circumstances of the case the imposition of penalty on the amount of Rs.5,22,18,000/- being the expenditure incurred by the appellant on Assets not belonging to the company is bad in law and requires to be deleted.

Appellant has made construction on PWD road to make it fit to use for its own business. This was capital expenditure and should have been accounted as such. Instead it has been claimed as revenue item. The AO has disallowed full amount and provided for depreciation. The CIT(A) has estimated the disallowance as 50%. The issue is of estimation as. to how much amount should be apportioned as assessee's share. No concealment is there. Deleted.

15. Disallowance u/s 40(a):

Ground: That on the facts and circumstances of the case the levy of penalty on the amount of Rs.64,00,000/-being the deduction claimed u/s 40(a) is erroneous as the appellant company has already disallowed the amount in the previous assessment year and subsequently.

Assessee has claimed deduction for Rs 64 lakhs u/s 40(a). Assessee was asked to explain the adjustment with supporting evidences. Assessee has brought no verifiable evidence which could establish payment of TDS corresponding to such expenditure in the government account. Since the claim has been made without having any supporting evidence. The claim is not established and is only to reduced taxable income and evade taxes. Therefore the penalty is sustained.

16. **Short credit on account of interest income** :

Ground: That on the facts and circumstances of the case the levy of penalty on amount of Rs.24,08,00,000/- being the interest income on deposits of taxes as per the directives of the Hon'ble High Courts, treated as income of the appellant is void ab initio and bad in law and therefore, requires to be deleted.

It was noticed that there is short credit of Rs 2408.00 lakh on account of interest income. The assessee has claimed the credit of entire TDS deducted by the respective authorities but has not offered the corresponding incomes for taxation under the garb of Appellant has claimed TDS on interest whereas the interest of Rs 2408.00 lakh has not been credited and not offered for tax. This is a deliberated act on the part of the assessee. Sustained.

17**. Terminal tax:**

Ground: That on the facts and circumstances of the case the levy of penalty on the amount of Rs.62,02,000/- being the interest income on terminal tax as per the directives of the Hon'ble High Courts treated as income of the appellant is void ab initio and bad in law and therefore, requires to be deleted.

The appellant has claimed interest on liability in respect of which the appellant has no details. Thus the claim has been made without any actual ascertained liability and to reduce taxable income. The penalty is sustained and the ground is dismissed."

65. The assessee being aggrieved with the order of the CIT(Appeals) to the extent he had upheld the penalty imposed by the Assessing Officer u/s 271(1)(c) of the I.T Act has carried the matter in appeal before us. It was submitted by the ld. A.R that the A.O had issued two "Show cause" notices (SCN's) to the assessee under Sec. 274 r.w.s 271(1)(c) of the Act, dated 31.01.2015, Annexure-13 of the assessee's compilation and dated 11.08.2017, Anneure-14 of the assessee's compilation. It was the claim of the ld. A.R that as the Assessing Officer

had failed to strike-off the irrelevant default in both the "Show Cause" notices (herein referred to as 'SCN's) issued u/s 274 r.w.s 271 of the Act, dated 31.01.2015 (supra) and dated 11.08.2017 (supra), therefore, the penalty thereafter imposed by him u/s 271(1)(c) of the I.T. Act cannot be sustained and is liable to be vacated. The ld. AR in order to drive home his aforesaid claim had drawn our attention to both of the aforesaid SCN's dated 31.01.2015 and 11.08.2017. Referring to the aforesaid discrepancy in the SCN's, dated 31.01.2015 and 11.08.2017, it was submitted by the ld. AR that as the AO had failed to validly put the assessee to notice as regards the specific default for which the impugned penalty under Sec.271(1)(c) was sought to be imposed on it, therefore, the assessee had remained divested of an opportunity to put forth in its defense a clear explanation that no such penalty was called for in its case. The ld. AR in support of its aforesaid contention had relied on a host of judicial pronouncements, as under:

(i). CIT Vs. Manjunatha Cotton & Ginning Factory
(2013) 35 taxmann.com 250 (Karnataka)

(ii). Mohd. Farhan A. Shaikh Vs. PCIT
(2021) 434 ITR 1 (Bombay)(FB)

(iii). CIT Vs. Samson Perinchery

(2007) 392 ITR 4 (Bombay)

(iv). Pr. CIT (Central) Vs. Golden Peace Hotels and Resorts (P) Ltd.
(2021) 124 tamnn.com 249 (SC)

(v). PCIT Vs. Goa Coastal Resorts and Recreation (P) Ltd.
(2021) 130 taxmann.com 379 (SC)

(vi). Dilip N. Shroff Vs. JCIT
(2007) 161 Taxman 218 (SC).

66. Per contra, the Ld. Departmental Representative (for short 'D.R') relied upon the orders of the lower authorities. It was submitted by the Ld. D.R that as the assessee was afforded sufficient opportunity by the in the course of penalty proceedings, thus, it was incorrect on its part to claim that no opportunity of being heard was afforded to it. It was submitted by the ld. D.R that now when the assessee in compliance to the SCN, dated 31.01.2015 r.w SCN, dated 11.08.2017 had in the course of penalty proceedings come forth with an explanation that no penalty u/s 271(1)(c) of the Act was called for in its hands, therefore, it was beyond comprehension that as to on what basis it could thereafter claim that it was not validly put to notice about the default for which penalty u/s 271(1)(c) of the Act was sought to be imposed on it.

67. We have heard the ld. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Before proceeding any further, we may herein observe that in addition to the aforesaid SCN's dated 30.01.2015 and dated 11.08.2017, the A.O had also issued a SCN, dated 11.04.2017 under Sec.274 r.w.s. 271 of the Act to the assessee company.

68. Admittedly, on a perusal of the SCN, dated 31.01.2015, it stands revealed that the Assessing Officer had failed to strike-off the irrelevant default while calling upon the assessee to explain that as to why it may not be subjected to penalty u/s 271(1)(c) of the Act. For the sake of clarity, the SCN dated 31.01.2015 (as per Annexure 13 of assessee's compilation dated 13.03.2019) is culled out as under:

I.T.N.S.-29

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Dy. Commissioner of Income-tax,
Circle 1(1), Bilaspur

PAN:- AADCS2066E
To,

Dated:**31 /01/2015**

M/s South Eastern Coalfields Ltd.
Seepat Road,
Bilapur (C.G.) 495001

Whereas in the course of proceedings before me for the assessment year 2012-13. It appears to me that you:-

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under Section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961, No ..... dated ..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under Section 142(1)/1 143(2) of the Income-tax Act, 1961.
No. ..... dated .....

***have concealed the particulars of your Income or furnished inaccurate particulars of such Income.**

You are hereby requested to appear before me at **11:40 A.M.**/P.M. on 26**/02/2015** and show cause why an order imposing a penalty on you should not be made under Section 271 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 show cause in writing on or before the said date which will be considered before any such order is made under Section 271(1)(c).

(Seal)

(Rituparn Namdeo)
Assistant Officer
Dy. Commissioner of Income Tax
Circle 1(1), Bilaspur

The aforesaid SCN, dated 31.01.2015 (supra) was thereafter followed by SCN's, dated 11.04.2017 and 11.08.2017. However, in both the SCN's, dated 11.04.2017 and 11.08.2017, the A.O had failed to point out the specific default for which the assessee was called upon to explain that as to why it may not be saddled with penalty u/s 271(1)(c) of the Act. Once again, for the sake of clarity the SCN dated

11.04.2017 and 11.08.2017 (as per Annexure 14 of assessee's compilation dated 13.03.2019) are culled out as under:

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

OFFICE OF THE
Dy. COMMISSIONER OF INCOME TAX , Circle-1(1),
MAHIMA COMPLEX, VYAPAR VIHAR,
BILASPUR (C.G.)

PAN: AADCS2066E

DATED: 11/04/2017

To,

M/s South Eastern Coalfields Ltd.,
Seepat Road,
Sarkanda,
Bilaspur

Where as in the course of proceedings before me for the A.Y. **2012-13** it appears to me that you:-

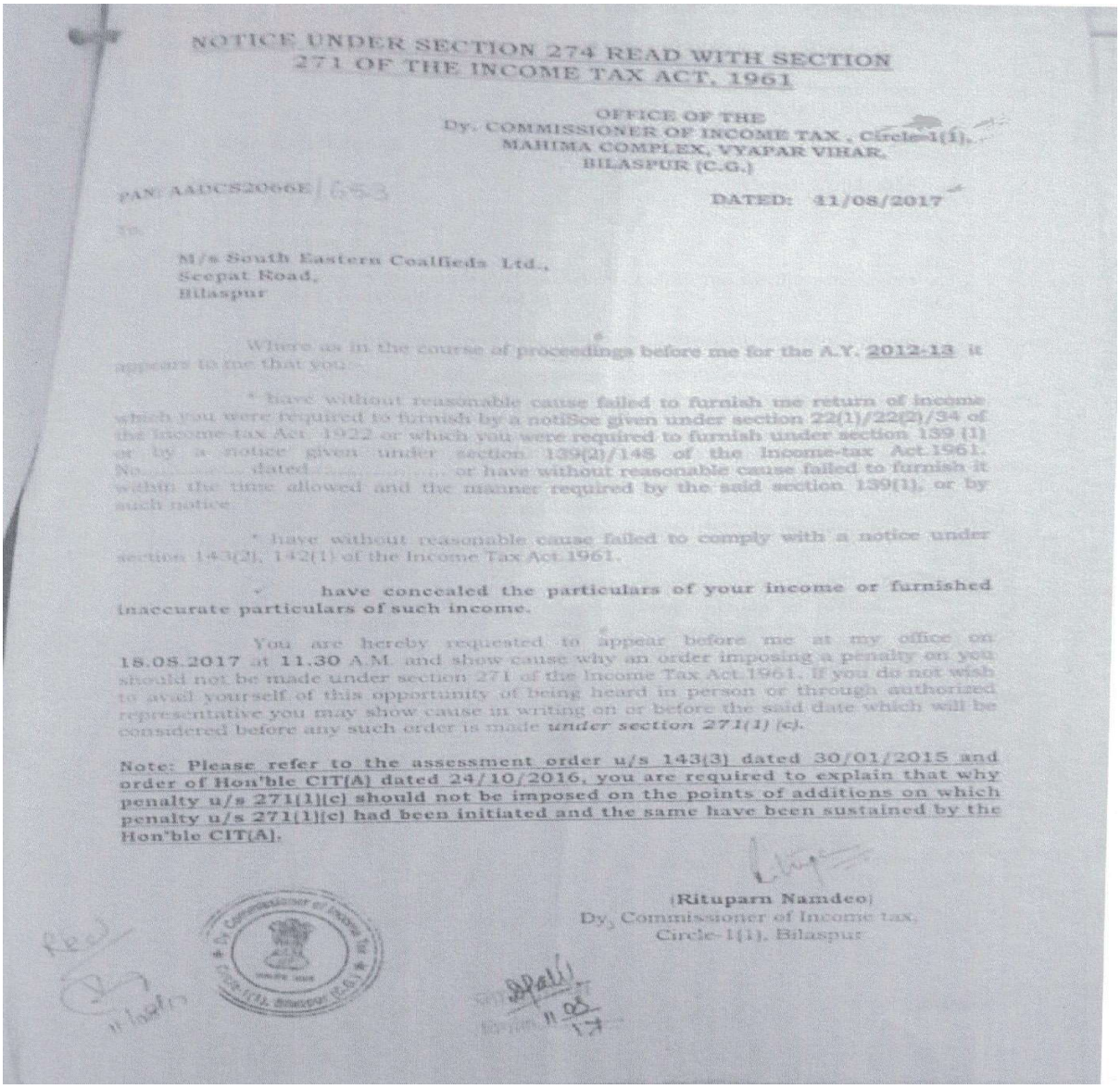
* have without reasonable cause failed to furnish me return of income which you were required to furnish by a notiSce given under section 22(1)/22(2)/34 of the Income-tax Act. 1922 or which you were required to furnish under section 139 (1) or by a notice given under section 139(2)/148 of the Income-tax Act.1961. No..... dated..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1), or by such notice.

* have without reasonable cause failed to comply with a notice under section 143(2), 142(1) of the Income Tax Act.1961.

✓ **have concealed the particulars of your income or furnished inaccurate particulars of such income.**

You are hereby requested to appear before me at my office on **10.05.2017** at **11.30** A.M. and show cause why an order imposing a penalty on you should not be made under section 271 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 show cause in writing on or before the said date which will be considered before any such order is made ***under section 271(1) (c).***

(Rituparn Namdeo)
Dy. Commissioner of Income tax ~~Officer,~~
Circle-1(1), Bilaspur



NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

OFFICE OF THE
Dy. COMMISSIONER OF INCOME TAX , Circle-1(1),
MAHIMA COMPLEX, VYAPAR VIHAR,
BILASPUR (C.G.)

PAN: AADCS2066E

DATED: 11/08/2017

To,

M/s South Eastern Coalfieds Ltd.,
Seepat Road,
Bilaspur

Where as in the course of proceedings before me for the A.Y. 2012-13 it appears to me that you-

* have without reasonable cause failed to furnish the return of income which you were required to furnish by a notiSce given under section 22(1)/22(2)/34 of the Income-tax Act 1922 or which you were required to furnish under section 139 (1) or by a notice given under section 139(2)/148 of the Income-tax Act 1961, No. dated or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1), or by such notice.

* have without reasonable cause failed to comply with a notice under section 143(2), 142(1) of the Income Tax Act 1961.

* have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are hereby requested to appear before me at my office on 18.08.2017 at 11.30 A.M. and show cause why an order imposing a penalty on you should not be made under section 271 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 show cause in writing on or before the said date which will be considered before any such order is made *under section 271(1) (c).*

Note: Please refer to the assessment order u/s 143(3) dated 30/01/2015 and order of Hon'ble CIT(A) dated 24/10/2016, you are required to explain that why penalty u/s 271(1)(c) should not be imposed on the points of additions on which penalty u/s 271(1)(c) had been initiated and the same have been sustained by the Hon'ble CIT(A).

(Rituparn Namdeo)
Dy. Commissioner of Income tax,
Circle-1(1), Bilaspur

As such the aforesaid failure to point out the specific default for which penalty u/s 271(1)(c) was sought to be imposed, viz. "concealment of the particulars of income" or "furnishing of inaccurate particulars of income" was allowed by the A.O to perpetuate in the SCN's, dated 11.04.2017 and 11.08.2017 (supra). Insofar the validity of the

jurisdiction assumed by the A.O for imposing penalty u/s 271(1)(c) is concerned, we find that the same has been assailed before us on the ground that as the irrelevant default in the aforesaid SCN's, dated 31.01.2015, 11.04.2017 and 11.08.2017 was not struck off by the A.O, therefore, the assessee was not validly put to notice as regards the specific default for which it was called upon to explain that as to why penalty may not be imposed on it under Sec. 271(1)(c) of the I.T Act.

69. We have given a thoughtful consideration to the facts of the case, and are persuaded to subscribe to the claim of the Ld. AR that the A.O had in the aforesaid SCN's dated 31.01.2015, 11.04.2017 and 11.08.2017 failed to point out the specific default for which penalty was sought to be imposed on the assessee company. In our considered view, as both the two defaults envisaged in Sec. 271(1)(c) i.e "concealment of income" and "furnishing of inaccurate particulars of income" are separate and distinct defaults which operate in their independent and exclusive fields, therefore, it was obligatory for the A.O to have clearly put the assessee company to notice as regards the specific default for which it was being called upon to explain that as to why penalty under Sec. 271(1)(c) may not be imposed on it. As

observed by us hereinabove, a perusal of the SCN's issued in the present case by the A.O under Sec. 274 r.w. Sec. 271(1)(c), dated 31.01.2015, 11.04.2017 and 11.08.2017 clearly reveals that there was no application of mind by the A.O while issuing the same. We are of a strong conviction that the very purpose of affording a reasonable opportunity of being heard to the assessee as per the mandate of Sec. 274(1) of the Act would not only be frustrated, but in fact would be rendered as redundant if an assessee is not conveyed in clear terms the specific default for which penalty under the said statutory provision was sought to be imposed on it. In our considered view, the indispensable requirement on the part of the A.O to put the assessee to notice as regards the specific charge contemplated under the aforesaid statutory provision, viz. 'concealment of income' or 'furnishing of inaccurate particulars of income' is not merely an idle formality but is a statutory obligation cast upon him, which we find had not been discharged in the present case as per the mandate of law.

70. As we have while disposing off the appeal of the assessee for A.Y.2009-10 in ITA No.156/RPR/2014 dealt with at length on the validity of the jurisdiction assumed by the A.O for imposing penalty

u/s.271(1)(c) of the Act on an assessee without pointing out in the "Show cause" notice (SCN) issued u/s.274 r.w.s. 271(1)(c) of the Act the specific default for which penalty was sought to be imposed in its case, therefore, the view therein taken by us will apply *mutatis mutandis* for disposing off the present appeal of the assessee for A.Y.2012-13 in ITA No.167/RPR/2018. Therefore, in the backdrop of our aforesaid observations, as the A.O in the present case also had imposed penalty u/s.271(1)(c) without pointing out in the SCN's dated 31.01.2015, 11.04.2017 and 11.08.2017 the specific default for which penalty was sought to be imposed, therefore, the penalty of Rs.81050.49 lacs (approx.) is on the same terms and reasoning vacated.

71. That as we have while disposing off the appeal filed by the assessee company in ITA No.167/RPR/2018 had held that the A.O had wrongly assumed jurisdiction u/s.271(1)(c) of the Act, therefore, borrowing the said reasoning and basis the appeal filed by the revenue in ITA No.170/RPR/2018 in absence of valid assumption of jurisdiction by the A.O u/s.271(1)(c) of the Act is on the same terms dismissed. As the appeal filed by the department is dismissed on the ground of invalid assumption of jurisdiction by the A.O for imposing

penalty u/s.271(1)(c) of the Act, therefore, we refrain from adverting to and adjudicating the grounds raised by the department on the basis of which the order of the CIT(Appeals) to the extent he had allowed part relief to the assessee has been assailed by the department before us, and, the same, thus, are left open.

72. Resultantly, the appeal filed by the assessee company in ITA No.167/RPR/2018 for A.Y.2012-13 is allowed in terms of our aforesaid observations while for, the appeal filed by the department in ITA No.170/RPR/2018 for A.Y.2012-13 is dismissed.

ITA No.39/RPR/2023 (Assessee's appeal)
A.Y.2013-14

73. We shall now take up the appeal filed by the assessee company for A.Y.2013-14, wherein the impugned order has been assailed on the following grounds of appeal before us:

> "1. That, on the facts and in the circumstances of the case and in law, impugned penalty order dated 10 November 2017 passed by the learned Deputy Commissioner of Income Tax, Circle-1(1), Bilaspur (" Ld. A.O) levying penalty under section 271(1)(c) of the Act is bad in law and liable to be quashed.
>
> 2.(a) That, on the facts and in the circumstances of case and in law, the (Ld. AO) erred in initiating penalty proceeding without specifying whether it is for concealment of income or furnishing inaccurate particulars of income.

(b) That, on the facts and in the circumstances of case, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [Ld. CIT(A), NFAC] has erred in not adjudicating the specific ground raised by the appellant raising the above issue of non-strike off.

(c) That on the facts and in the circumstances of the case, the Ld. AO has erred in levying penalty for inaccurate particulars in cases where two views are possible and Assessee has taken one of the possible views which is also supported by several judicial precedence.

(d) That on the facts and in the circumstances of the case, and in law, the Ld. AO has erred in levying penalty on additions made on a legal issue.

3 That on the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [Ld. CIT(A), NFAC'] erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of land compensation and rehabilitation expenses without appreciating the fact that the said expenditure is revenue in nature and difference of opinion does not amount to furnishing of inaccurate particulars.

4. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC has erred in confirming the penalty for furnishing inaccurate particulars on account of addition made u/s 14A without appreciating that the Appellant had correctly furnished all details of expenditure and addition was made merely because of difference of opinion.

5 (a) That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty on disallowance of expenditure incurred on coal transportation by the Ex-Servicemen coal transporting companies made on ad-hoc basis without appreciating that penalty u/s 271(1)(c) should not be imposed for additions/ disallowances made on the basis of estimates.

(b) That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty without appreciating the fact that penalty was deleted by Ld. CIT(A) on similar issues in preceding years by observing that the disallowance is made on the basis of mere estimates, thereby violating the principle of consistency.

6. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty on disallowance of Compensation paid to employees based on actuarial valuation

without appreciating that the claim is made by the Appellant by relying on several favorable judicial precedence.

7. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of depreciation claimed on building leased to Apollo Hospitals without appreciating the fact that the Assessee has correctly furnished all details of expenditure and disallowance was made merely due to difference of opinion.

8(a) That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty on account of LD penalty received without appreciating the fact that the said receipt is capital in nature and difference of opinion does not amount to either furnishing of inaccurate particulars or concealment of income.

(b) That on the facts and in the circumstances of the case, the Ld. AO erred in levying penalty without even specifying the particular limb under which penalty is imposed in the penalty order.

9. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of Provision on mine closure without appreciating that the claims made by the Appellant by relying on several favorable judicial precedence.

10. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of OBR expenses without appreciating the fact that the claim is made by the Appellant by relying on several favorable judicial precedence.

11. (a) That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty on disallowance of expenses on assets not belonging to company (roads) on ad-hoc basis without appreciating the fact that penalty u/s 271(1)(c) should not be imposed for additions/ disallowances made on the basis of estimates.

(b) That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty without appreciating the fact that penalty was deleted by Ld. CIT(A) on similar issues in preceding years by observing that the disallowance is made on the basis of mere estimates, thereby violating the principle of consistency.

12. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing

inaccurate particulars on account of additions made due to short credit of interest income without appreciating the fact that Appellant has completely disclosed all relevant facts.

13. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of land crop compensation expenses without appreciating the fact that the said expenditure is revenue in nature and difference of opinion does not amount to furnishing of inaccurate particulars.

14. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing of inaccurate particulars on account of disallowance of depreciation claimed on railway siding leased to Aryan Coal Beneficiation Pvt Ltd without appreciating the fact that the Appellant has correctly furnished all details of expenditure and disallowance was made merely due to difference of opinion.

15. That the appellant craves leave to add and /or alter, amend, modify or rescind the grounds hereinabove before or at the hearing of this appeal.

74. Succinctly stated, the assessee company had filed its return of income for A.Y. 2013-14 on 29.11.2013, declaring an income of Rs.654359.91 lacs (approx.). Subsequently, the case of the assessee was selected for scrutiny assessment under Sec.143(2) of the Act.

75. Original assessment was thereafter framed by the A.O vide his order passed under Sec.143(3) of the Act, dated 27.02.2015, wherein the income of the assessee was assessed at Rs.831977.91 lacs (approx.) after, inter alia, making certain additions/disallowances, which after being scaled down by the CIT(A) remained as under :-

S. No.	Particulars	Amount (Rs.in lakhs)
1.	Disallowance of land compensation and rehabilitation expenses	5845.00
2.	Disallowance u/s.14A of the Act	178.00
3.	Disallowance of payment made to ESM transporters.	12506.00
4.	Disallowance of compensation to employees on actuarial	13326.00
5.	Disallowance of deprecation on Apollo hospital building	54.00
6.	Addition of amount received by the assessee of LD penalty (by recharacterizing the same as a revenue receipt)	79.00
7.	Disallowance of provision for mine closure	17041.00
8.	Disallowance of over burden removal expenses	87008.00
9.	Disallowance of expenditure on assets not belonging to the assessee	897.00
10.	Addition of amount of short credit interest income	3768.00
11.	Disallowance of land crop compensation expenses	552.00
12.	Disallowance of depreciation on railway siding	37.00

76. The A.O while framing the assessment vide his order passed under Sec.143(3) of the Act, dated 27.02.2015 had also initiated penalty proceedings under Sec.271(1)(c) of the Act without referring to the specific default for which the said proceedings had been initiated.

Also, the A.O a/w. the assessment order had issued a "Show Cause" notice (SCN) u/s. 274 r.w.s. 271(1)(c) of the Act dated 27.02.2015.

77. After the order passed by the CIT(A), dated 24.10.2016 disposing off the quantum appeal of the assessee, the A.O vide a SCN, dated 11.08.2017 called upon the assessee to explain that as to why penalty under Sec.271(1)(c) of the Act may not be imposed on it w.r.t. the additions/disallowances that were sustained by the CIT(A). As the reply filed by the assessee on 17.08.2017 did not find favor with the A.O, therefore, he vide his order passed under Sec.271(1)(c) of the Act, dated 10.11.2017 saddled it with a penalty of Rs. 86893.96 lacs for failure on its part to disclose fully or truly all the particulars of income w.r.t the aforesaid additions/disallowances that were sustained /upheld by the CIT(Appeals).

78. Aggrieved, the assessee assailed the order passed by the A.O under Sec.271(1)(c) of the Act, dated 10.11.2017 before the CIT(A), who upheld the order of the A.O, observing as under :-

> "Issue No.-1:- The appellant has claimed an expenditure of Rs.58,45,00,000/- as land compensation and rehabilitation expenses in the course of obtaining land for mining purpose. As per the assessment order the Assessing Officer has disallowed this claim of Rs.58,45,00,000/- the expenditure made towards the compensation and rehabilitation. These payments were made towards main acquisition. Following the

judgment of ITAT Nagpur, these expenses were disallowed as they are capital in nature. It is pertinent to mention that the claim of the expenditure is towards the acquiring complete rights of possession. This opinion was upheld by several courts as mentioned in the order of the CIT (Appeals), who decided the issue in favour of revenue. Respectfully following these judgments penalty levied on this issue is justified and the order of the Assessing Officer hence is confirmed.

Issue No.-2:- The AO in the assessment order has disallowed expenditure of Rs.1,78,00,000/- adopting provision of section 14A. The assessee has made substantial investments under the head shares & securities and there is tax-free income of Rs. 74,18,00,000/- income which does not form part of total income. However, no proportionate expenditure was disallowed in this respect in the computation of income.

In this regard, AO on examination of the reply of the appellant observed that the assessee has tax free dividend of RS. 34,92,00,000/- which are generated due to investment of Rs. 60,00,00,000/- in various mutual funds. There is also no dispute that the assessee is primarily involved in the business of production/extraction of coal. Therefore, if it also indulges in activities like investments in mutual funds etc., there has to be sufficient men, material, management to handle investment of such proportion. It is, therefore, expected that for each activity corresponding personnel, overhead, other operating costs etc. are incurred, which are intrinsically blended into the total cost to company.

The AO is justified as he has not tax the dividend income which is exempt u/s 56 of the IT Act read with section 115(0). The AO had only disallowed the expenditure as per Rule 8D of IT Rules, 1961 for earning such income which does not form part of total income and confirmed the addition of Rs. 1,78,00,000/-. The penalty levied on this issue hence is justified and the appeal stands dismissed.

Issue No.-3:- Assessee-company has claimed expenses of Rs.500,24,00,000/-under the head payments of transportation. The AO observed that the rates of transportation paid to these companies were higher than those paid to other transporters. As the nature of work was same, such higher charges were clearly made for purposes other than commercial expediencies. Assessee has not furnished the required details such as the quantity transported and the rates charged by the ESM companies alongwith their names. As

regards, the NON-ESM companies, the assessee has not furnished such details. With the above discussion assessing officer has disallowed 50% of expenses i.e. Rs. 250,12,00,000/- booked under this head and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

In the absence of complete and verifiable details, the AO has to resort to some estimates for allowance/disallowance of a particular expenditure, which has also been done in the present case by the AO by disallowing 50% of the total expenses of Rs. 500,24,00,000/- i.e. Rs. 250,12,00,000/-. However Id. CIT(A), Bilaspur opined that the estimated disallowance made by the AO at the rate of 50% of the above expenditure is on the higher side, therefore, he restricted the disallowance to Rs. 125,06,00,000/- i.e. 25% of the total claim of Rs. 250,12,00,000/-. The Assessing Officer decision on this issue is confirmed. The penalty levied on this issue is justified to the extent of 25% and the Appeal stands partly allowed.

Issue No.-4:- The AO in his assessment order found that the company has created provisions as per actuarial valuations against various heads of expenses. There were no names and addresses with each of whom these liabilities can be associated, which is totally contingent in nature and is also unascertainable. Therefore, these claims made by the assessee to the extent of actuarial value is not allowed. Under these observation AO disallowed the sum of Rs. 133,26,00,000/- and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income. Taking into account the facts held that the provisions created for Rs. 133,26,00,000/-for future liabilities as provisions are not allowed as admissible expenditure. The penalty on this issue of the appellant is rightly decided by the AO and hence, the appeal is dismissed.

Issue No.-5:- Assessee has claimed depreciation of Rs. 54,00,000/- on building rented to M/s Apollo Hospital building for the purpose of running its clinic as a general hospital, open to all and not for exclusive use of the assessee. Whereas, as per the lease agreement between the Apollo Hospital and the assessee, the said building was given on lease for a period of 30 years. The assessee's attempt to pass rental income as business income was not correct, therefore, the AO disallowed the same and added it back to the income of the assessee and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

However, to clarify the matter further, during the course of hearing, it was clarified in the line of past years that the charging section 32 of the Act, for claim of depreciation, clearly specifies
In respect of depreciation of-

(i) buildings, machinery, plant or furniture, being tangible assets; (i1) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,
owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed. Deprication on such asset hence can not be allowed and the opinion of the Assession Officer is found to be correct and no interference is made to the pealty order the appeal hence is dismissed.

Issue No.-6:- The AO in his assessment order mentioned that the assessee had received L.D penalty of Rs. 79,00,0001- imposed on parties due to late supply of plant & machineries. AO refuted the argument of the assessee by highlighting the facts that, damages, in the form of L D penalty, had been received by the assessee on account of belated supply of machineries. The penalty appears to have been received as compensation for the loss of profit, and therefore, was in the nature of a revenue receipt. In absence of any evidence there is no reason to accept the fact that a part of the total receipts was capital in nature. In absence of any reasonable and logical explanation to justify any loss borne by the assessee for delay in supply of machineries, the AO added back Rs. 79,00,000/- to the income of the assessee. Since the income was under reported to the extent of Rs. 79,00,000/- concealment penalty was levied and is justified and hence, the appeal on this issue is dismissed.

Issue No.-7:- The AO in his assessment order observed by that the 'provision for mine closure at Rs. 170,41,00,000/- was separately claimed as deduction. On being asked by the AO, assessee justified the claim of provision for mine closure by quoting guideline set out by the Ministry of Coal in this regard. However, AO carefully examined the guidelines and made certain observations denying the claim to the assessee, impugned fund was neither created nor set aside during the year, No expenditure to the extent was actually incurred, impugned claim of Rs. 170,41,00,000/- has no direct nexus

with the income of the assessee, The fund so created is supposed to be reversed back in the hands of the assessee before the expenditure, Further complications will arise in that year as there will be some mismatch between actual expenditure and accumulated fund created out of estimated profits. AO disallowed the sum of Rs. 170,41,00,000/- and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No.-8:- The AO in his assessment order mentioned that OBR adjustment of Rs. 870,08,00,000/- was claimed by the assessee in its P&L account, similar claim was made in previous years. This claim was made on the basis of creation of a charge formulated by M/s Coal India Ltd. for its subsidiaries by employing a system of accounting called "Over Burden Removal Accounting". According to this system "OBR adjustment" was worked out on the basis of expected life time of a mine and approximate over burden to be removed during such life time. The claim made el) the assessee that such a notional charge helps in spreading over burden removal cost over the life span of a mine is misleading while taxation of actual profit is concerned. Accordingly, amount of Rs. 870,08,00,000/- was disallowed and added back to the income of the assessee and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

After taking into account the facts it can be held that, since this issue had been agitated for quite a long period and the assessee had been cleverly taking the expenditure which is met directly or indirectly by the Ministry of Coal to the balance sheet itself and debiting the whole amount in the P & L account is not legal. The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No.-9:- Assessee has claimed a sum of Rs. 17,86,00,000/- & Rs. 4,00,000/-under the head "Expenses on assets not belonging to the company". The AO observed that the majority of the expenditure was done on road belonging to PWD as the roads do not belongs to the assessee, as per Explanation 1 to section 32 of the Act, depreciation @ 10% may be allowed but remaining expenses have to be capitalized to be carried forward. Under these observation AO disallowed the sum of Rs. Rs. 17,86,00,000/- & Rs. 4,00,000/- and has also

initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

After taking into account the facts that the appellant's employees and its business have also been benefited due to incurring of the above expenditure and relying on findings of his predecessor in the appellate order for the Asst. Yr. 2002-03, firstly confirmed the addition of Rs.4,00,000/- and secondly has restricted the addition of Rs.17,86,00,000/- to 50% of the total expenditure under this head i.e. Rs. 8,93,00,000/-. The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.
Issue No.-10:- The AO noticed that there is a short credit on account of interest income which was also noticed in the earlier years. the assessee has claimed the credit of entire TDS deducted by the respective authorities, but has not offered the corresponding incomes for taxation. Therefore, the AO added back the entire amount of Rs. 37,48,00,000/- & Rs. 20,00,000/- by invoking the section 199 or the Act read with Rule 37BA of IT Rules clearly lay down the principle, credit of TDS in a particular year can be allowed only if the assessee discloses corresponding receipts in that year and the AO has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

The assessee company is not correct in not disclosing the accrued interest on the presumption of unforeseen happening and the period for contempt of Court also lapse because of limitation and on the facts that the assessee company did not leave any stone unturned" concluded that the AO has rightly added the amount of Rs. 37,48,00,000/- & Rs. 20,00,000/-. The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No-11:- Assessee has claimed an expenditure of Rs. 5,52,00,000/- on land/crop compensation in the course of obtaining acquisition of land for mining purpose. The AO stated that unless land compensation & rehabilitation charges were paid, it was not possible for them to get access to the land under which lay the bed of coal. The company explained that this type of expenditure incurred in earlier years also and put forward same argument before. The explanations offered were not found acceptable by the A.0 and addition made by extensively quoting the order of the Hon'ble ITAT, Nagpur Bench in the assessee's own case in ITA Nos. 18 to 22/Nag/2011 dated 28-02-2002 for the Asst. Yrs. 1989-90, 1990-91, 1994-95, 1995-96 & 1996-97 and further placing

reliance on the decision of Hon'ble Supreme Court in the case of Saurashtra Cement Ltd., 325 IT 422 (SC), disallowed Rs. 13483.00 lakhs on land compensation and rehabilitation expenses being a capital expenditure and added it back to the returned income and has also initiated the penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

The CIT(A), Bilaspur held that as the above issue has been decided against the assessee up to the Tribunal level and respectfully following the order of the Hon'ble Tribunal and orders of his predecessors, he confirmed the disallowance of Rs. 5,52,00,000/-. The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No.-12:- Assessee has claimed depreciation of Rs. 37,00,000/- on assets leased to M/s Aryan Coal Beneficiation Pvt. Ltd. for to be used as a railway siding. The AO found that as per the lease agreement it appeared that the railway siding was given on a lease for a period of 20 years. The assessee's attempt to pass rental income as business income was not correct, therefore, the AO disallowed the same and added it back to the income of the assessee and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

After taking into account the facts it is held that AO has rightly disallowed the claim of depreciation on the leased assets and the same not being admissible deduction therefore, confirmed addition of Rs. 37,00,000/-. The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

The Hon’ble Supreme court in the case of Jivanlal and Sons
VS.
Assistant Commissioner of Income-tax* (A. K. SIKRI AND S. ABDUL NAZEER, JJ. PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO. (S). 33864 OF 2019) HAS OBSERVED THAT

The provisions made and penal charges undisputedly are inadmissible expenditure from the profits of the business. Hence this amount should have been statutorily added back. Further, from the computation of income, the assessee added back certain inadmissible expenditure. However, he excluded the amounts as mentioned above. Thus, the addition was only partial and not kW. Unless and until the legal provision then in force permitted exclusion of the amount of expenditures they have to be added back. The assessee cannot feign ignorance of

> Section 40(11) of the Income Tax Act as he is well trained and well versed in law representing not only the assessee, but various other clients. As far as the assessee's malafide intention is concerned, the burden was entirely on the assessee to then show in terms of Explanation-I to the provision permitting imposition of penalty that such intention never existed when the above act was committed. For that, there was no material either in the form of evidence of the assessee or the affidavit of the Chartered Accountant. Hence the Commissioner was right, according to the Tribunal, in imposing this penalty. The attempt to blame the Chartered Accountant cannot result in the assessee's exoneration and claimed in absolute terms. In the circumstances, the penalty was rightly imposed.
>
> Following the analogy of the judgments quoted as above the order of the A.O in levying of the penalty is reasonable and justified and hence the penalty order is sustained."

79. The assessee being aggrieved with the order of the CIT(Appeals) who had upheld the penalty imposed by the Assessing Officer u/s 271(1)(c) of the I.T Act has carried the matter in appeal before us. It was submitted by the ld. A.R that the A.O had issued two "Show cause" notices (SCN) to the assessee company under Sec. 274 rw.s 271(1)(c) of the Act, dated 27.02.2015, Annexure-15 of the assessee's compilation and dated 11.08.2017, Anneure-16 of the assessee's compilation. It was the claim of the ld. A.R that as the Assessing Officer had failed to strike-off the irrelevant default in both the "Show Cause" notices (herein referred to as 'SCN's) issued u/s 274 r.w.s 271 of the Act, dated 27.02.2015 (supra) and dated 11.08.2017 (supra), therefore, the penalty thereafter imposed by him u/s 271(1)(c) of the

I.T. Act for furnishing of inaccurate particulars of income cannot be sustained and is liable to be vacated. The ld. AR in order to drive home his aforesaid claim had drawn our attention to both of the aforesaid SCN's, i.e dated 27.02.2015 and 11.08.2017. Referring to the aforesaid discrepancy in the SCN's, dated 27.02.2015 and 11.08.2017, it was submitted by the ld. AR that as the AO had failed to validly put the assessee to notice as regards the specific default for which the impugned penalty under Sec. 274 r.w.s 271(1)(c) was sought to be imposed on it, therefore, the assessee had remained divested of an opportunity to put forth in its defense a clear explanation that no such penalty u/s 271(1)(c) was called for in its case. The ld. AR in support of his aforesaid contention had relied on a host of judicial pronouncements, as under:

(i). CIT Vs. Manjunatha Cotton & Ginning Factory
(2013) 35 taxmann.com 250 (Karnataka)

(ii). Mohd. Farhan A. Shaikh Vs. PCIT
(2021) 434 ITR 1 (Bombay)(FB)

(iii). CIT Vs. Samson Perinchery
(2007) 392 ITR 4 (Bombay)

(iv). Pr. CIT (Central) Vs. Golden Peace Hotels and Resorts (P) Ltd.
(2021) 124 tamnn.com 249 (SC)

(v). PCIT Vs. Goa Coastal Resorts and Recreation (P) Ltd.

(2021) 130 taxmann.com 379 (SC)

(vi). Dilip N. Shroff Vs. JCIT

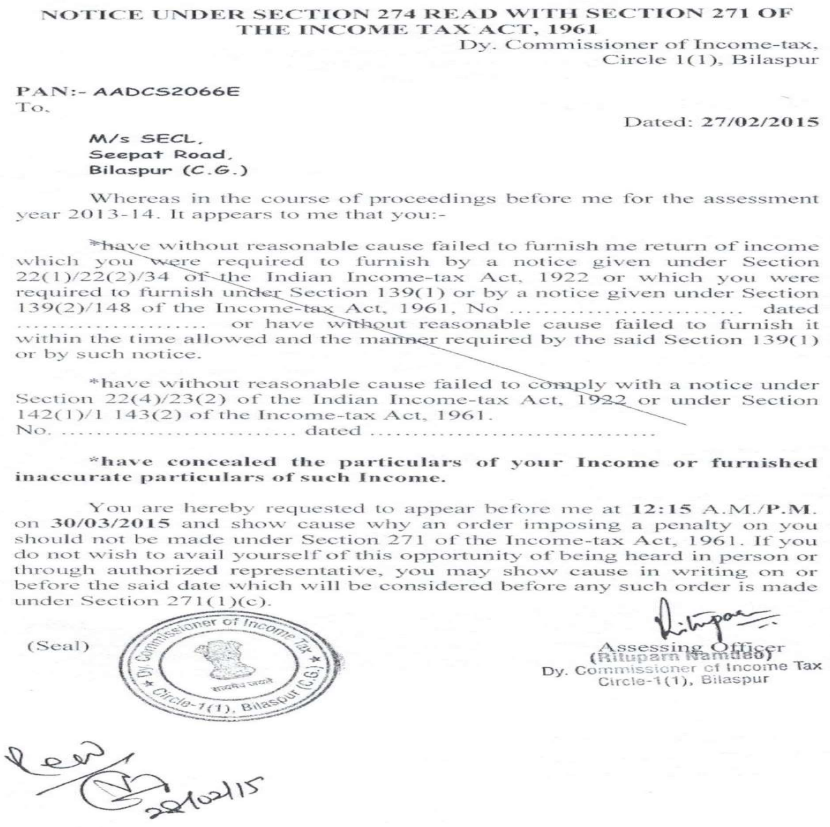
(2007) 161 Taxman 218 (SC).

80. Per contra, the Ld. Departmental Representative (for short 'D.R') relied upon the orders of the lower authorities. It was submitted by the Ld. D.R that as the assessee was afforded sufficient opportunity by the A.O in the course of penalty proceedings, thus, it was incorrect on its part to claim that no opportunity of being heard was afforded to it. It was submitted by the ld. D.R that now when the assessee in compliance to the SCN, dated 27.02.2015 r.w SCN, dated 11.08.2017 had vide its reply come forth with an explanation that no penalty u/s 271(1)(c) of the Act was called for in its hands, therefore, it was beyond comprehension that as to on what basis it could thereafter claim that it was not validly put to notice about the default for which penalty u/s 271(1)(c) of the Act was sought to be imposed on it.

81. We have heard the ld. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Before proceeding any further, we may herein

observe that in addition to the aforesaid two SCN's dated 27.02.2015 and 11.08.2017, the A.O had also issued a SCN dated 12.04.2017 under Sec.274 r.w.s. 271 of the Act to the assessee company.

82. Admittedly, on a perusal of the SCN, dated 27.02.2015, it stands revealed that the Assessing Officer had failed to strike-off the irrelevant default while calling upon the assessee to explain that as to why it may not be subjected to penalty u/s 271(1)(c) of the Act. For the sake of clarity, the SCN dated 27.02.2015 (as per Annexure 15 of assessee's compilation dated 13.03.2019) is culled out as under:



NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Dy. Commissioner of Income-tax,
Circle 1(1), Bilaspur

PAN:- AADCS2066E
To,

Dated: 27/02/2015

M/s SECL,
Seepat Road,
Bilaspur (C.G.)

Whereas in the course of proceedings before me for the assessment year 2013-14. It appears to me that you:-

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under Section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961, No ..... dated ..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under Section 142(1)/1 143(2) of the Income-tax Act, 1961.
No. ..... dated .....

***have concealed the particulars of your Income or furnished inaccurate particulars of such Income.**

You are hereby requested to appear before me at **12:15** A.M./**P.M.** on **30/03/2015** and show cause why an order imposing a penalty on you should not be made under Section 271 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 show cause in writing on or before the said date which will be considered before any such order is made under Section 271(1)(c).

(Seal)

Dy. Commissioner of Income Tax * Circle-1(1), Bilaspur (C.G.)

Assessing Officer
(Nitupam Ramdeo)
Dy. Commissioner of Income Tax
Circle-1(1), Bilaspur

27/02/15

It may further be observed that the aforesaid SCN, dated 27.02.2015 (supra) was thereafter followed by SCN, dated 12.04.2017 and SCN, dated 11.08.2017. However, in the both SCN's, dated 12.04.2017 and 11.08.2017 also the A.O had failed to point out the specific default for which the assessee was called upon to explain that as to why it may not be saddled with penalty u/s 271(1)(c) of the Act. Once again, for the sake of clarity the SCN dated 12.04.2017 and SCN dated 11.08.2017 (as per Annexure 16 of the assessee's compilation dated 13.03.2019) are culled out as under:

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

OFFICE OF THE
Dy. COMMISSIONER OF INCOME TAX , Circle-1(1),
MAHIMA COMPLEX, VYAPAR VIHAR,
BILASPUR (C.G.)

PAN: AADCS2066E **DATED: 12/04/2017**

To,

M/s South Eastern Coalfields Ltd.,
Seepat Road,
Sarkanda,
Bilaspur

Where as in the course of proceedings before me for the A.Y. **2013-14** it appears to me that you:-

* have without reasonable cause failed to furnish me return of income which you were required to furnish by a notiSce given under section 22(1)/22(2)/34 of the Income-tax Act. 1922 or which you were required to furnish under section 139 (1) or by a notice given under section 139(2)/148 of the Income-tax Act.1961. No..... dated..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1), or by such notice.

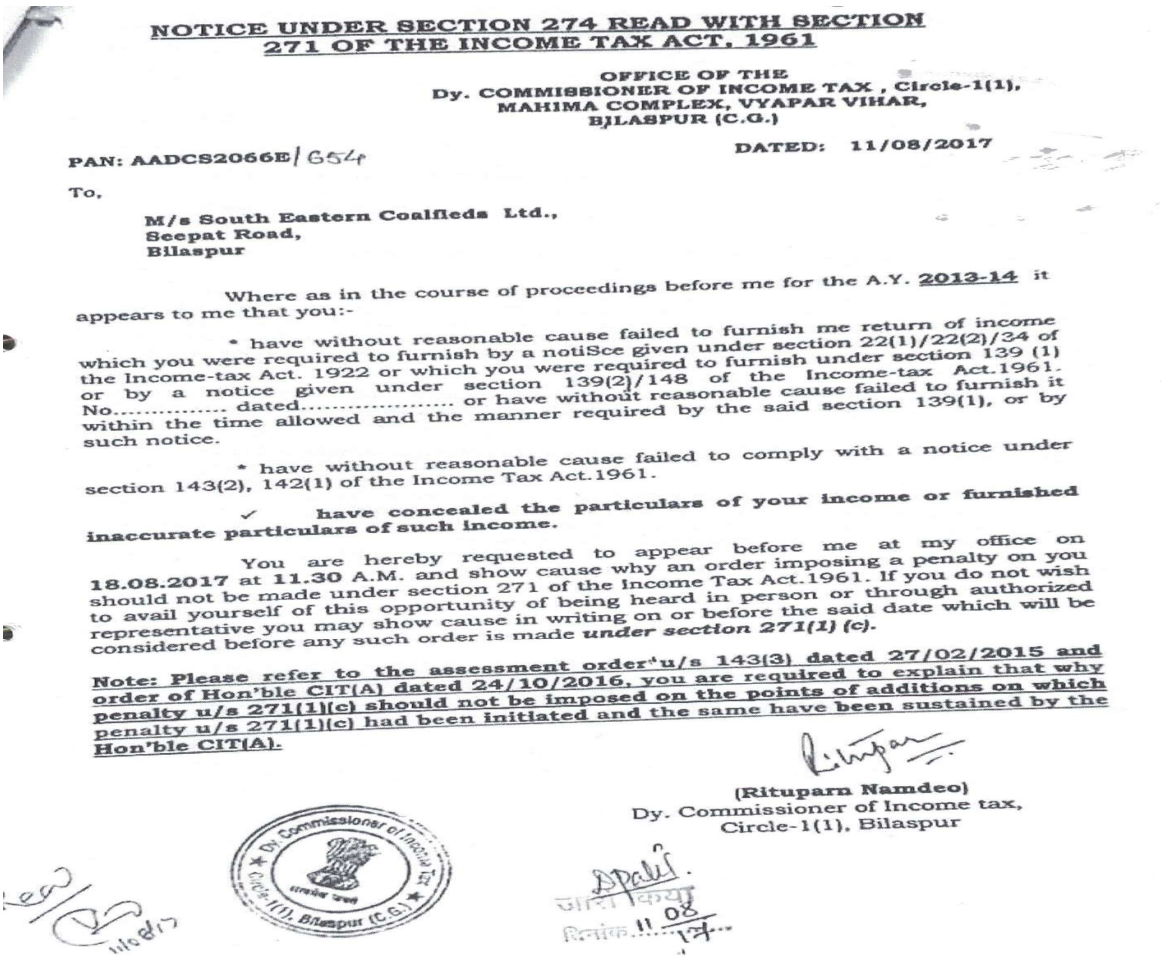
* have without reasonable cause failed to comply with a notice under section 143(2), 142(1) of the Income Tax Act.1961.

✓ **have concealed the particulars of your income or furnished inaccurate particulars of such income.**

You are hereby requested to appear before me at my office on **10.05.2017** at **11.30** A.M. and show cause why an order imposing a penalty on you should not be made under section 271 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 show cause in writing on or before the said date which will be considered before any such order is made ***under section 271(1) (c).***

Dy. Commissioner of Income Tax Circle-1(1), Bilaspur (C.G.)

(Rituparn Namdeo)
Dy. Commissioner of Income tax,
Circle-1(1), Bilaspur



NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

OFFICE OF THE
Dy. COMMISSIONER OF INCOME TAX , Circle-1(1),
MAHIMA COMPLEX, VYAPAR VIHAR,
BILASPUR (C.G.)

PAN: AADCS2066E/ 654 DATED: 11/08/2017

To,

M/s South Eastern Coalfieds Ltd.,
Seepat Road,
Bilaspur

Where as in the course of proceedings before me for the A.Y. 2013-14 it appears to me that you:-

* have without reasonable cause failed to furnish me return of income which you were required to furnish by a notiSce given under section 22(1)/22(2)/34 of the Income-tax Act. 1922 or which you were required to furnish under section 139 (1) or by a notice given under section 139(2)/148 of the Income-tax Act.1961. No..... dated..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1), or by such notice.

* have without reasonable cause failed to comply with a notice under section 143(2), 142(1) of the Income Tax Act.1961.

✓ **have concealed the particulars of your income or furnished inaccurate particulars of such income.**

You are hereby requested to appear before me at my office on **18.08.2017** at **11.30** A.M. and show cause why an order imposing a penalty on you should not be made under section 271 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 show cause in writing on or before the said date which will be considered before any such order is made ***under section 271(1) (c).***

Note: Please refer to the assessment order u/s 143(3) dated 27/02/2015 and order of Hon'ble CIT(A) dated 24/10/2016, you are required to explain that why penalty u/s 271(1)(c) should not be imposed on the points of additions on which penalty u/s 271(1)(c) had been initiated and the same have been sustained by the Hon'ble CIT(A).

(Rituparn Namdeo)
Dy. Commissioner of Income tax,
Circle-1(1), Bilaspur

As such the aforesaid failure to point out the specific default for which penalty u/s 271(1)(c) was sought to be imposed, viz. "concealment of the particulars of income" or "furnishing of inaccurate particulars of income" was allowed by the A.O to perpetuate in the SCN's, dated 12.04.2017 and 11.08.2017 (supra). Insofar the validity of the jurisdiction assumed by the A.O for imposing penalty u/s 271(1)(c) is concerned, we find that the same has been assailed before us on the ground that as the irrelevant default in the aforesaid 'Show cause'

notice(s), dated 27.02.2015, 12.04.2017 and 11.08.2017 was not struck off by the A.O, therefore, the assessee company was not validly put to notice as regards the default for which it was called upon to come forth with an explanation that as to why penalty may not be imposed on it under Sec. 271(1)(c) of the I.T Act.

83. We have given a thoughtful consideration to the facts of the case, and are persuaded to subscribe to the claim of the assessee that the A.O had in all the aforesaid SCN's dated 27.02.2015, 12.04.2017 and 11.08.2017 failed to point out the specific default for which penalty was sought to be imposed on the assessee company. In our considered view, as both of the two defaults envisaged in Sec. 271(1)(c) i.e "concealment of income" and "furnishing of inaccurate particulars of income" are separate and distinct defaults which operate in their independent and exclusive fields, therefore, it was obligatory for the A.O to have clearly put the assessee to notice as regards the default for which it was being called upon to explain that as to why penalty under Sec. 271(1)(c) may not be imposed on it. As observed by us hereinabove, a perusal of the 'Show cause' notice(s) issued in the present case by the A.O under Sec. 274 r.w. Sec. 271(1)(c), dated 27.02.2015, 12.04.2017 and 11.08.2017 clearly reveals that there was

no application of mind by the A.O while issuing the same. We are of a strong conviction that the very purpose of affording a reasonable opportunity of being heard to the assessee as per the mandate of Sec. 274(1) of the Act would not only be frustrated, but in fact would be rendered as redundant if an assessee is not conveyed in clear terms the specific default for which penalty under the said statutory provision is sought to be imposed on it. In our considered view, the indispensable requirement on the part of the A.O to put the assessee to notice as regards the specific charge contemplated under the aforesaid statutory provision viz. 'concealment of income' or 'furnishing of inaccurate particulars of income' is not merely an idle formality but is a statutory obligation cast upon him, which we find had not been discharged in the present case as per the mandate of law.

84. As we have while disposing off the appeal of the assessee for A.Y.2009-10 in ITA No.156/RPR/2014 dealt with at length on the validity of the jurisdiction assumed by the A.O for imposing penalty u/s.271(1)(c) of the Act on an assessee without pointing out in the "Show cause" notice (SCN) issued u/s.274 r.w.s. 271(1)(c) of the Act the specific default for which penalty was sought to be imposed in its

case, therefore, the view therein taken by us will apply *mutatis mutandis* for disposing off the present appeal of the assessee for A.Y.2013-14 in ITA No.39/RPR/2023. Therefore, in the backdrop of our aforesaid observations, as the A.O in the present case also had imposed penalty u/s.271(1)(c) without pointing out in the SCN 's dated 27.02.2015, 12.04.2017 and 11.08.2017 the specific default for which penalty was sought to be imposed, therefore, the penalty of Rs.86893.96 lacs (approx.) is on the same terms and reasoning vacated.

85. Resultantly, the appeal filed by the assessee in ITA No.39/RPR/2013 for A.Y.2013-14 is allowed in terms of our aforesaid observations.

ITA No.40/RPR/2023 (Assessee's appeal)
A.Y.2014-15

86. We shall now take up the appeal filed by the assessee company for A.Y.2014-15, wherein the impugned order has been assailed on the following grounds of appeal before us:

> "1. That, on the facts and in the circumstances of the case and in law, impugned penalty order dated 26 December 2017 passed by the learned Deputy Commissioner of Income Tax, Circle -1(1), Bilaspur (Ld. AO) levying penalty under section 271(1)(c) of the Act is bad in law and liable to be quashed.

2.(a) That, on the facts and in the circumstances of case and in law, the Ld. AO erred in initiating penalty proceedings without specifying whether it is for concealment of income or furnishing inaccurate particulars of income.

(b) That, on the facts and in the circumstances of case, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ['Ld. CIT(A), NFAC'] has erred in not adjudicating the specific ground raised by the Appellant raising the above issue of non-strike off.

(c) That on the facts and in the circumstances of the case, the Ld. AO has erred in invoking penalty for inaccurate particulars in cases where two views are possible and Assessee has taken one of the possible views which is also supported by several judicial precedence.

(d) That on the facts and in the circumstances of the case, and in law, the Ld. AO has erred in levying penalty on additions made on a legal issue.

3. That on the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ['Ld. CIT(A), NFAC'] erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of land compensation and rehabilitation expenses without appreciating the fact that the said expenditure is revenue in nature and difference of opinion does not amount to furnishing of inaccurate particulars.

4. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC has erred in confirming the penalty for furnishing inaccurate particulars on account of addition made u/s 14A without appreciating the fact that the Appellant had correctly furnished all details of expenditure and addition was made merely because of difference of opinion.

5(a). That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty on disallowance of expenditure incurred on coal transportation by the Ex-Servicemen coal transporting companies made on ad-hoc basis without appreciating that penalty u/s 271(1)(c) should not be imposed for additions/ disallowances made on the basis of estimates.

(b) That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty without appreciating the fact that penalty was deleted by Ld. CIT(A) on similar issues in preceding years by observing that the disallowance is made on the basis of mere estimates, thereby violating the principle of consistency.

6. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty on disallowance of Compensation paid to employees based on actuarial valuation without appreciating that the claim is made by the Appellant by relying on several favorable judicial precedence.

7. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of depreciation claimed on building leased to Apollo Hospitals without appreciating the fact that the Assessee has correctly furnished all details of expenditure and disallowance was made merely due to difference of opinion.

8. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of sustainable development expenditure without appreciating the fact that the said expenditure is revenue in nature and difference of opinion does not amount to furnishing of inaccurate particulars.

9(a). That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty on account of LD penalty received without appreciating the fact that the said receipt is capital in nature and difference of opinion does not amount to either furnishing of inaccurate particulars or concealment of income.

(b) That on the facts and in the circumstances of the case, the Ld. AO erred in levying penalty without even specifying the particular limb under which penalty is imposed in the penalty order.

10. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of Provision on mine closure without appreciating that the claims made by the Appellant by relying on several favorable judicial precedence.

11. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of OBR expenses without appreciating the fact that the claim is made by the Appellant by relying on several favorable judicial precedence.

12. (a) That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty on disallowance of expenses on assets not belonging to company (roads) on ad-hoc basis

without appreciating the fact that penalty u/s 271(1)(c) should not be imposed for additions/ disallowances made on the basis of estimates.

(b) That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty without appreciating the fact that penalty was deleted by Ld. CIT(A) on similar issues in preceding years by observing that the disallowance is made on the basis of mere estimates, thereby violating the principle of consistency.

13. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of additions made due to short credit of interest income without appreciating the fact that Appellant has completely disclosed all relevant facts.

14. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing of inaccurate particulars on account of disallowance of depreciation claimed on railway siding leased to Aryan Coal Beneficiation Pvt Ltd without appreciating the fact that the Appellant has correctly furnished all details of expenditure and disallowance was made merely due to difference of opinion.

15. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing of inaccurate particulars on account of disallowance of payments made to Coal India Sports Promotion fund without appreciating the fact that the said expenditure is a business expenditure and difference of opinion does not amount to furnishing of inaccurate particulars.

16. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of excess claim of depreciation without appreciating the fact that the Appellant had completely and correctly furnished all relevant details of assets.

17. That the appellant craves leave to add and /or alter, amend, modify or rescind the grounds hereinabove before or at the hearing of this appeal."

87. Succinctly stated, the assessee company had filed its return of income for A.Y. 2014-15 on 29.11.2014, declaring an income of

Rs.708260.81 lacs (approx.). Subsequently, the case of the assessee was selected for scrutiny assessment under Sec.143(2) of the Act.

88. Original assessment was thereafter framed by the A.O vide his order passed under Sec.143(3) of the Act, dated 30.12.2016, wherein the income of the assessee was assessed at Rs.845381.38 lacs (approx.) after, inter alia, making certain additions/disallowances, which after being scaled down by the CIT(A) remained as under:-

S. No.	Particulars	Amount (Rs.in lakhs)
1.	Disallowance of land compensation and rehabilitation expenses	8162.00
2.	Disallowance u/s.14A of the Act	29.55
3.	Disallowance of payment made to ESM transporters.	14354.82
4.	Disallowance of compensation to employees on actuarial	955.00
5.	Disallowance of deprecation on Apollo hospital building	54.00
6.	Disallowance of sustainable development expenditure	63.00
7.	Addition of amount of LD Penalty received (by recharacterizing the same as revenue receipt)	381.00
8.	Disallowance of provision for mine closure	2498.00
9.	Disallowance of overburden removal expenses	71483.00

10.	Disallowance of expenditure on assets not belonging to the assessee company	339.70
11.	Addition made on account of short credit of interest income	3016.59
12.	Disallowance of depreciation claimed on railway siding	37.00
13.	Disallowance of payment made to Coal India Sports promotion fund	296.00
14.	Disallowance of assessee's claim of excess depreciation	38.16

89. The A.O while framing the assessment vide his order passed under Sec.143(3) of the Act, dated 30.12.2016 had also initiated penalty proceedings under Sec.271(1)(c) of the Act for furnishing of inaccurate particulars of income, and also without mentioning any specific default w.r.t. the additions/disallowances that were made in the hands of the assessee, which for the sake of ready reference are culled out as under:

S. No.	Particulars	Mention of limb for initiating penalty in Quantum Assessment order dated 30.12.2016 passed u/s.143(3) of the Act
1.	Disallowance of land compensation and rehabilitation expenses	No specific limb has been invoked while initiating penalty proceedings (AO's remark in the assessment order-" penalty u/s.271(1)(c) of the Act is separately initiated.
2.	Disallowance u/s.14A of the Act	
3.	Disallowance of payment made to ESM transporters.	
4.	Disallowance of compensation to employees on actuarial	

5.	Disallowance of deprecation on Apollo hospital building	
6.	Disallowance of sustainable development expenditure	For "furnishing inaccurate particulars of income"
7.	Addition of amount of LD Penalty received (by recharacterizing the same as revenue receipt)	No specific limb has been invoked while initiating penalty proceedings (AO's remark in the assessment order-" penalty u/s.271(1)(c) of the Act is separately initiated.
8.	Disallowance of provision for mine closure	
9.	Disallowance of overburden removal expenses	
10.	Disallowance of expenditure on assets not belonging to the assessee company	
11.	Addition made on account of short credit of interest income	
12.	Disallowance of depreciation claimed on railway siding	
13.	Disallowance of payment made to Coal India Sports promotion fund	
14.	Disallowance of assessee's claim of excess depreciation	

Also, the A.O issued a "Show Cause" notice (SCN) u/s. 274 r.w.s. 271(1)(c) of the Act dated 30.12.2016 a/w. the assessment order to the assessee.

90. After the order passed by the CIT(Appeals), Bilaspur dated 24.03.2017 disposing off the quantum appeal of the assessee, the A.O vide a SCN, dated 11.08.2017 called upon the assessee to explain as to why penalty under Sec.271(1)(c) of the Act may not be imposed on it w.r.t. the additions/disallowances that were sustained by the CIT(A).

As the reply filed by the assessee did not find favor with the A.O, therefore, he vide his order passed under Sec.271(1)(c) of the Act, dated 26.12.2017 saddled it with a penalty of Rs. 62550.32 lacs (approx.) for furnishing of inaccurate particulars of income w.r.t the aforesaid additions/disallowances, as under:

S. No.	Particulars	Mention of limb for levying penalty in penalty order dated 26.12.2017
1.	Disallowance of land compensation and rehabilitation expenses	For "furnishing of inaccurate particulars"
2.	Disallowance u/s.14A of the Act	For "furnishing of inaccurate particulars"
3.	Disallowance of payment made to ESM transporters.	For "furnishing of inaccurate particulars"
4.	Disallowance of compensation to employees on actuarial	For "furnishing of inaccurate particulars"
5.	Disallowance of deprecation on Apollo hospital building	For "furnishing of inaccurate particulars"
6.	Disallowance of sustainable development expenditure	For "furnishing of inaccurate particulars"
7.	Addition of amount of LD Penalty received (by recharacterizing the same as revenue receipt)	For "furnishing of inaccurate particulars"
8.	Disallowance of provision for mine closure	For "furnishing of inaccurate particulars"
9.	Disallowance of overburden removal expenses	For "furnishing of inaccurate particulars"
10.	Disallowance of expenditure on assets not belonging to the assessee company	For "furnishing of inaccurate particulars"
11.	Addition made on account of short credit of interest income	For "furnishing of inaccurate particulars"

12.	Disallowance of depreciation claimed on railway siding	For "furnishing of inaccurate particulars"
13.	Disallowance of payment made to Coal India Sports promotion fund	No specific limb has been invoked while initiating penalty proceeidngs
14.	Disallowance of assessee's claim of excess depreciation	For "furnishing of inaccurate particulars"

91. Aggrieved, the assessee assailed the penalty imposed by the A.O under Sec.271(1)(c) of the Act, dated 26.12.2017 before the CIT(A), who partly sustained the order of the A.O, observing as under :-

> "**Issue No.-**1:-The appellant has claimed an expenditure of Rs.81,62,00,000/- as land compensation and rehabilitation expenses in the course of obtaining land for mining purpose. As per the assessment order the Assessing Officer has disallowed this claim of Rs.81,62,00,000/- the expenditure made towards the compensation and rehabilitation. These payments were made towards main acquisition. Following the judgment of ITAT Nagpur, these expenses were disallowed as they are capital in nature. It is pertinent to mention that the claim of the expenditure is towards the acquiring complete rights of possession. This opinion was upheld by several courts as mentioned in the order of the CIT (Appeals), who decided the issue in favour of revenue. Respectfully following these judgments penalty levied on this issue is justified and the order of the Assessing Officer hence is confirmed.
>
> **Issue No.-2:-** The AO in the assessment order has disallowed expenditure of Rs.29,55,495/- adopting provision of section 14A. The assessee has made substantial investments under the head shares & securities and there is tax-free income of Rs. 75,94,00,000/- income which does not form part of total income. However, no proportionate expenditure was disallowed in this respect in the computation of income.
>
> In this regard, AO on examination of the reply of the appellant observed that the assessee has tax free dividend of Rs. 47,13,00,000/- which are generated due to investment of Rs. 60,00,00,000/- in various mutual funds. There is also no dispute that the assessee is primarily involved in the business

of production/extraction of coal. Therefore, if it also indulges in activities like investments in mutual funds etc., there has to be sufficient men, material, management to handle investment of such proportion. It is, therefore, expected that for each activity corresponding personnel, overhead, other operating costs etc. are incurred, which are intrinsically blended into the total cost to company.

The AO is justified as he has not tax the dividend income which is exempt u/s 56 of the IT Act read with section 115(0). The AO had only disallowed the expenditure as per Rule 8D of IT Rules, 1961 for earning such income which does not form part of total income and confirmed the addition of Rs. 29,55,495/-. The penalty levied on this issue hence is justified and the appeal stands dismissed.

Issue No.-3:- Assessee-company has claimed expenses of Rs. 574,19,31,248/-under the head payments of transportation. The AO observed that the rates of transportation paid to these companies were higher than those paid to other transporters. As the nature of work was same, such higher charges were clearly made for purposes other than commercial expediencies. Assessee has not furnished the required details such as the quantity transported and the rates charged by the ESM companies alongwith their names. As regards, the NON-ESM companies, the assessee has not furnished such details. With the above discussion assessing officer has disallowed 50% of expenses i.e. Rs. 287,09,65,624/- booked under this head and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.
In the absence of complete and verifiable details, the AO has to resort to some estimates for allowance/disallowance of a particular expenditure, which has also been done in the present case by the AO by disallowing 50% of the total expenses of Rs. 574,19,31,248/- i.e. Rs. 287,09,65,624/-.

However Id. CIT(A), Bilaspur opined that the estimated disallowance made by the AO at the rate of 50% of the above expenditure is on the higher side, therefore, he restricted the disallowance to Rs. 143,54,82,812/- i.e. 25% of the total claim of Rs. 287,09,65,624/-. The Assessing Officer decision on this issue is confirmed. The penalty levied on this issue is justified to the extent of 25% and the Appeal stands partly allowed.

Issue No.-4:- The AO in his assessment order found that the company has created provisions as per actuarial valuations against various heads of expenses. There were no names and

addresses with each of whom these liabilities can be associated, which is totally contingent in nature and is also unascertainable. Therefore, these claims made by the assessee to the extent of actuarial value is not allowed. Under these observation AO disallowed the sum of Rs. 9,55,00,000/- and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

Taking into account the facts held that the provisions created for Rs. 9,55,00,000/- for future liabilities as provisions are not allowed as admissible expenditure. The penalty on this issue of the appellant is rightly decided by the AO and hence, the appeal is dismissed.

Issue No.-5:- Assessee has claimed depreciation of Rs. 54,00,000/- on building rented to M/s Apollo Hospital building for the purpose of running its clinic as a general hospital, open to all and not for exclusive use of the assessee. Whereas, as per the lease agreement between the Apollo Hospital and the assessee, the said building was given on lease for a period of 30 years. The assessee's attempt to pass rental income as business income was not correct, therefore, the AO disallowed the same and added it back to the income of the assessee and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

However, to clarify the matter further, during the course of hearing, it was clarified in the line of past years that the charging section 32 of the Act, for claim of depreciation, clearly specifies
In respect of depreciation of-

(i) buildings, machinery, plant or furniture, being tangible assets; (il) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1 st day of April, 1998,

owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed. Deprecation on such asset hence can't be allowed and the opinion of the Assessing Officer is found to be correct and no interference is made to the penalty order the appeal hence is dismissed.

Issue No.-6:- The appellant in P & L account has claimed "Welfare Expenses" under which an expenditure of Rs.

63,00,000/- has been claimed as "sustainable development expenses". The AO in his order stated that the nature of business carried on is only extraction and sale of coal. The change in the character of surface area can never be considered as commercial activities. Thus, these expenses on environmental aspects do not have any revenue implication and are solely incurred for capital asset i.e. land. It had nothing to the business activities of the assessee such an activity leads to permanent improvement of land, which in itself is a capital asset. The AO disallowed the sum of Rs. 63,00,000/- and also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

The AO has rightly treated this expenditure as capital expenditure. The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No.-7:- The AO in his assessment order mentioned that the assessee had received L.D penalty of Rs. 3,81,00,000/- imposed on parties due to !ate supply of plant & machineries. AO refuted the argument of the assessee by highlighting the facts that, damages, in the form of L D penalty, had been received by the assessee on account of belated supply of machineries. The penalty appears to have been received as compensation for the loss of profit, and therefore, was in the nature of a revenue receipt. In absence of any evidence there is no reason to accept the fact that a part of the total receipts was capital in nature. In absence of any reasonable and logical explanation to justify any loss borne by the assessee for delay in supply of machineries, the AO added back Rs. 3,81,00,000/- to the income of the assessee. Since the income was under reported to the extent of Rs. 3,81,00,000/- concealment penalty was levied and is justified and hence, the appeal on this issue is dismissed.

Issue No.-8:- The AO in his assessment order observed by that the 'provision for mine closure at Rs. 24,98,00,000/- was separately claimed as deduction. On being asked by the AO, assessee justified the claim of provision for mine closure by quoting guideline set out by the Ministry of Coal in this regard. However, AO carefully examined the guidelines and made certain observations denying the claim to the assessee, impugned fund was neither created nor set aside during the year, No expenditure to the extent was actually incurred, impugned claim of Rs. 24,98,00,000/-has no direct nexus with the income of the assessee, The fund so created is supposed to be reversed back in the hands of the assessee before the

expenditure, Further complications will arise in that year as there will be some mismatch between actual expenditure and accumulated fund created out of estimated profits. AO disallowed the sum of Rs. 24,98,00,000/- and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No.-9:- The AO in his assessment order mentioned that OBR adjustment of Rs. 714,83,00,000/- was claimed by the assessee in its P&L account, similar claim was made in previous years. This claim was made on the basis of creation of a charge formulated by M/s Coal India Ltd. for its subsidiaries by employing a system of accounting called "Over Burden Removal Accounting". According to this system "OBR adjustment" was worked out on the basis of expected life time of a mine and approximate over burden to be removed during such life time. The claim made by the assessee that such a notional charge helps in spreading over burden removal cost over the life span of a mine is misleading while taxation of actual profit is concerned. Accordingly, amount of Rs. 714,83,00,000/- was disallowed and added back to the income of the assessee and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

After taking into account the facts it can be held that, since this issue had been agitated for quite a long period and the assessee had been cleverly taking the expenditure which is met directly or indirectly by the Ministry of Coal to the balance sheet itself and debiting the whole amount in the P & L account is not legal. The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No.-10:- Assessee has claimed a sum of Rs. 36,49,00,000/- under the head "miscellaneous expenses". The AO observed that the majority of the expenditure was done on road belonging to PWD as the roads do not belongs to the assessee, as per Explanation 1 to section 32 of the Act, depreciation @ 10% may be allowed but remaining expenses have to be capitalized to be carried forward. Under these observation AO disallowed the sum of Rs. Rs. 36,49,00,000/- and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

After taking into account the facts that the appellant's employees and its business have also been benefited due to incurring of the above expenditure. The benefit in enduring in nature. The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No.-11:- The AO noticed that there is a short credit on account of interest income which was also noticed in the earlier years. the assessee has claimed the credit of entire TDS deducted by the respective authorities, but has not offered the corresponding incomes for taxation. Therefore, the AO added back the entire amount of Rs. 29,96,00,000/- & Rs. 20,59,891/- by invoking the section 199 of the Act read with Rule 37BA of IT Rules clearly lay down the principle, credit of TDS in a particular year can be allowed only if the assessee discloses corresponding receipts in that year and the AO has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

The assessee company is not correct in not disclosing the accrued interest on the presumption of unforeseen happening and the period for contempt of Court also lapse because of limitation The AO has rightly added the amount of Rs. 29,96,00,000/- & Rs. 20,59,891/-. The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No.-12:- Assessee has claimed depreciation of Rs. 37,00,000/- on assets leased to M/s Aryan Coal Beneficiation Pvt. Ltd. for to be used as a railway siding. The AO found that as per the lease agreement it appeared that the railway siding was given on a lease for a period of 20 years. The assessee's attempt to pass rental income as business income was not correct, therefore, the AO disallowed the same and added it back to the income of the assessee and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

After taking into account the facts it is held that AO has rightly disallowed the claim of depreciation on the leased assets and the same not being admissible deduction therefore, confirmed addition of Rs. 37,00,000/-. The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No.13:- Assessee has claimed a sum of Rs. 2,96,00,000/- as an expenditure paid to Coal India Ltd.

> towards sports promotion fund contribution. In the assessment order AO has categorically pointed out that the said expenditure has been borne on the activities which are not connected with the business activities of the assessee and therefore, non business in nature and disallowed the expenditure of Rs. 2,96,00,000/- and added it back to the income of the assessee and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.
>
> The AO has rightly treated this expenditure as non business expenditure for which reasons are well discussed in the assessment order and on the basis of which he confirmed the disallowance of Rs. 2,96,00,000/-.
>
> **Issue No.-14:-** Addition on account of excess depreciation wrongly claimed @ 40%; AO during the course of assessment proceedings found that assessee has claimed depreciation on some vehicles @ 40% which the assessee itself admitted that has been wrongly claimed instead of depreciation rate @15%. Thus, on this count an addition of Rs. 38,16,159/- was made to the income of the assessee and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.
>
> The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed."

92. The assessee being aggrieved with the order of the CIT(Appeals) who had upheld the penalty imposed by the Assessing Officer u/s 271(1)(c) of the I.T Act has carried the matter in appeal before us. It was submitted by the ld. A.R that the A.O had issued two "Show cause" notices (SCN) to the assessee under Sec. 274 rw.s 271(1)(c) of the Act, dated 30.12.2016, Annexure-17 of the assessee's compilation and dated 11.08.2017, Anneure-18 of the assessee's compilation. It was the claim of the ld. A.R that as the Assessing Officer had failed to

strike-off the irrelevant default in both the "Show Cause" notices (herein referred to as 'SCN's) issued u/s 274 r.w.s 271 of the Act, dated 30.12.2016 (supra) and dated 11.08.2017 (supra), therefore, the penalty thereafter imposed by him u/s 271(1)(c) of the I.T. Act cannot be sustained and is liable to be vacated. The ld. AR in order to drive home his aforesaid claim had drawn our attention to both the aforesaid SCN's, i.e dated 30.12.2016 and 11.08.2017. Referring to the aforesaid discrepancy in the SCN's, dated 30.12.2016 and 11.08.2017, it was submitted by the ld. AR that as the AO had failed to validly put the assessee company to notice as regards the default for which the impugned penalty under Sec. 274 r.w.s 271(1)(c) was sought to be imposed on it, therefore, the assessee had remained divested of an opportunity to put forth in its defense a clear explanation that no such penalty u/s 271(1)(c) was called for in its case. The ld. AR in support of his aforesaid contention had relied on a host of judicial pronouncements, as under:

(i). CIT Vs. Manjunatha Cotton & Ginning Factory
(2013) 35 taxmann.com 250 (Karnataka)

(ii). Mohd. Farhan A. Shaikh Vs. PCIT
(2021) 434 ITR 1 (Bombay)(FB)

(iii). CIT Vs. Samson Perinchery

(2007) 392 ITR 4 (Bombay)

(iv). Pr. CIT (Central) Vs. Golden Peace Hotels and Resorts (P) Ltd. (2021) 124 tamnn.com 249 (SC)

(v). PCIT Vs. Goa Coastal Resorts and Recreation (P) Ltd. (2021) 130 taxmann.com 379 (SC)

(vi). Dilip N. Shroff Vs. JCIT (2007) 161 Taxman 218 (SC).

93. Per contra, the Ld. Departmental Representative (for short 'D.R') relied upon the orders of the lower authorities. It was submitted by the Ld. D.R that as the assessee company in the course of the penalty proceedings was afforded sufficient opportunity by the A.O, thus, it was incorrect on its part to claim that no opportunity of being heard was afforded to it. It was submitted by the ld. D.R that now when the assessee in compliance to the SCN, dated 30.12.2016 r.w SCN, dated 11.08.2017 had in the course of penalty proceedings on 18.08.2017 come forth with an explanation that no penalty u/s 271(1)(c) of the Act was called for in its hands, therefore, it was beyond comprehension that as to on what basis it could thereafter claim that it was not validly put to notice about the default for which penalty u/s 271(1)(c) of the Act was sought to be imposed on it.

94. We have heard the ld. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Before proceeding any further, we may herein observe that in addition to the aforesaid two SCN's dated 30.12.2016 and 11.08.2017, the A.O had also issued a SCN, dated 13.05.2017 under Sec.274 r.w.s. 271 of the Act to the assessee company.

95. Admittedly, on a perusal of the SCN, dated 30.12.2016, it stands revealed that the Assessing Officer had failed to strike-off the irrelevant default while calling upon the assessee to explain that as to why it may not be subjected to penalty u/s 271(1)(c) of the Act. For the sake of clarity, the SCN dated 30.12.2016 (as per Annexure 17 of assessee's compilation dated 13.03.2019) is culled out as under:

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Deputy Commissioner of Income-tax,
Circle-1(1), Mahima Complex,
Bilaspur (CG)

PAN:- AADCS2066E

To,

Dated: **30/12/2016**

M/s South Eastern Coalfields Limited.,
Seepat Road,
Bilaspur (C.G.) 495006

Whereas in the course of proceedings before me for the assessment year **2014-15.** It appears to me that you:-

*~~have~~ without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under Section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961, No ..... dated ..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under Section 142(1)/1 143(2) of the Income-tax Act, 1961. No. ..... dated .....

***have concealed the particulars of your Income or furnished inaccurate particulars of such Income.**

You are hereby requested to appear before me at **03:30 P.M.** on **27/01/2017** and show cause why an order imposing a penalty on you should not be made under Section 271 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 show cause in writing on or before the said date which will be considered before any such order is made under Section 271(1)(c).

(Seal)

Dy. Commissioner of Income Tax Circle-1(1), Bilaspur (C.G.)

Assessing Officer

(Bilyaram Nandeo)
Dy. Commissioner of Income Tax

PDCR
58/143

It may further be observed, that the aforesaid SCN, dated 30.12.2016 (supra) was thereafter followed by SCN, dated 13.05.2017 and SCN, dated 11.08.2017. However, in both the SCN, dated 13.05.2017 and dated 11.08.2017 also the A.O had failed to point out the specific

default for which the assessee was called upon to explain as to why it may not be saddled with penalty u/s 271(1)(c) of the Act. Once again, for the sake of clarity, the SCN dated 13.05.2017 and SCN dated 11.08.2017 (as per Annexure 18 of the assessee's compilation dated 13.03.2019) are culled out as under:

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Deputy Commissioner of Income-tax,
Circle-1(1), Mahima Complex,
Bilaspur (CG)

PAN:- AADCS2066E

To,

M/s South Eastern Coalfields Limited,
Seepat Road,
Sarkanda,
Bilaspur (C.G.) 495001

Dated: **13/05/2017**

Whereas in the course of proceedings before me for the assessment year **2014-15.** It appears to me that you:-

*have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under Section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish under Section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961, No ..... dated ..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

*have without reasonable cause failed to comply with a notice under Section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under Section 142(1)/1 143(2) of the Income-tax Act, 1961. No. ..... dated .....

***have concealed the particulars of your Income or furnished inaccurate particulars of such Income.**

You are hereby requested to appear before me at **11:00 AM.** on **15/06/2017** and show cause why an order imposing a penalty on you should not be made under Section 271 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 show cause in writing on or before the said date which will be considered before any such order is made under Section 271(1)(c).

(Seal)

Dy. Commissioner of Income Tax Circle-1(1), Bilaspur (C.G.) सत्यमेव जयते

Assessing Officer

(Pituparn Namdeo)
Dy. Commissioner of Income Tax
Circle 1(1), Bilaspur

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

OFFICE OF THE
Dy. COMMISSIONER OF INCOME TAX , Circle-1(1),
MAHIMA COMPLEX, VYAPAR VIHAR,
BILASPUR (C.G.)

PAN: AADCS2066E /655

DATED: 11/08/2017

To,

M/s South Eastern Coalfieds Ltd.,
Seepat Road,
Bilaspur

Where as in the course of proceedings before me for the A.Y. **2014-15** it appears to me that you:-

* have without reasonable cause failed to furnish me return of income which you were required to furnish by a notiSce given under section 22(1)/22(2)/34 of the Income-tax Act. 1922 or which you were required to furnish under section 139 (1) or by a notice given under section 139(2)/148 of the Income-tax Act.1961. No..... dated..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1), or by such notice.

* have without reasonable cause failed to comply with a notice under section 143(2), 142(1) of the Income Tax Act.1961.

✓ **have concealed the particulars of your income or furnished inaccurate particulars of such income.**

You are hereby requested to appear before me at my office on **18.08.2017** at **11.30** A.M. and show cause why an order imposing a penalty on you should not be made under section 271 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 show cause in writing on or before the said date which will be considered before any such order is made ***under section 271(1) (c).***

Note: Please refer to the assessment order u/s 143(3) dated 30/12/2016 and order of Hon'ble CIT(A) dated 24/03/2017, you are required to explain that why penalty u/s 271(1)(c) should not be imposed on the points of additions on which penalty u/s 271(1)(c) had been initiated and the same have been sustained by the Hon'ble CIT(A).

(Rituparn Namdeo)
Dy. Commissioner of Income tax,
Circle-1(1), Bilaspur

Dy. Commissioner of Income Tax ★ Circle-1(1), Bilaspur (C.G.) ★ सत्यमेव जयते

Recd 11/8/17

Dispatched
दिनांक 11/08/17

As such the aforesaid failure to point out the specific default for which penalty u/s 271(1)(c) was sought to be imposed, viz. “concealment of the particulars of income” or “furnishing of inaccurate particulars of

income" was allowed by the A.O to perpetuate in the SCN, dated 13.05.2017 and 11.08.2017 (supra). Insofar the validity of the jurisdiction assumed by the A.O for imposing penalty u/s 271(1)(c) is concerned, we find that the same has been assailed before us on the ground that as the irrelevant default in the aforesaid 'Show cause' notice(s), dated 30.12.2016, 13.05.2017 and 11.08.2017 was not struck off by the A.O, therefore, the assessee was not validly put to notice as regards the default for which it was called upon to explain that as to why penalty may not be imposed on it under Sec. 271(1)(c) of the I.T Act.

96. We have given a thoughtful consideration to the facts of the case, and are persuaded to subscribe to the claim of the assessee that the A.O in all the aforesaid SCN's dated 30.12.2016, 13.05.2017 and 11.08.2017 had failed to point out the specific default for which penalty was sought to be imposed on the assessee. In our considered view, as both of the two defaults envisaged in Sec. 271(1)(c), i.e "concealment of income" and "furnishing of inaccurate particulars of income" are separate and distinct defaults which operate in their independent and exclusive fields, therefore, it was obligatory for the A.O to have clearly put the assessee to notice as regards the default

for which it was being called upon to explain that as to why penalty under Sec. 271(1)(c) may not be imposed on it. As observed by us hereinabove, a perusal of the SCN's issued in the present case by the A.O under Sec. 274 r.w. Sec. 271(1)(c), dated 30.12.2016, 13.05.2017 and 11.08.2017 clearly reveals that there was no application of mind by the A.O while issuing the same. We are of a strong conviction that the very purpose of affording a reasonable opportunity of being heard to the assessee as per the mandate of Sec. 274(1) of the Act would not only be frustrated, but in fact would be rendered as redundant if an assessee is not conveyed in clear terms the specific default for which penalty under the said statutory provision is sought to be imposed on it. In our considered view, the indispensable requirement on the part of the A.O to put the assessee to notice as regards the specific charge contemplated under the aforesaid statutory provision, viz. "concealment of income" or "furnishing of inaccurate particulars of income" is not merely an idle formality but is a statutory obligation cast upon him, which we find had not been discharged in the present case as per the mandate of law.

97. As we have while disposing off the appeal of the assessee for A.Y.2009-10 in ITA No.156/RPR/2014 dealt with at length on the

validity of the jurisdiction assumed by the A.O for imposing penalty u/s.271(1)(c) of the Act on an assessee without pointing out in the "Show cause" notice (SCN) issued u/s.274 r.w.s. 271(1)(c) of the Act the specific default for which penalty was sought to be imposed in its case, therefore, the view therein taken by us will apply *mutatis mutandis* for disposing off the present appeal of the assessee for A.Y.2014-15 in ITA No.40/RPR/2023. Therefore, in the backdrop of our aforesaid observations, as the A.O in the present case also had imposed penalty u/s.271(1)(c) without pointing out in the SCN dated 30.12.2016, 13.05.2017 and 11.08.2017 the specific default for which the penalty was sought to be impose, therefore, the penalty of Rs.62550.32 lacs (approx.) is on the same terms and reasoning vacated.

98. Resultantly, the appeal filed by the assessee in ITA No.40/RPR/2013 for A.Y.2014-15 is allowed in terms of our aforesaid observations.

ITA No.41/RPR/2023 (Assessee's appeal)
A.Y.2015-16

99. We shall now take up the appeal filed by the assessee company for A.Y.2015-16, wherein the impugned order has been assailed on the following grounds of appeal before us:

> "1. That on the facts and in the circumstances of the case and in law, impugned penalty order dated 30 November, 2018 passed by the Learned Assistant Commissioner of Income Tax, Circle-1(1), Bilaspur ('Ld. A.O) levying penalty under section 271(1)(c) of the Act is bad in law and liable to be quashed.
>
> 2. (a) That, on the facts and in the circumstances of the case and in law, the Ld. AO erred in initiating penalty proceeding without specifying whether it is for concealment of income or furnishing inaccurate particulars of income.
>
> (b) That on the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [Ld. CIT(A), NFAC] has erred in not adjudicating the specific ground raised by the Appellant raising the above issue of non-strike off.
>
> (c) That on the facts and in the circumstances of the case, the Ld. AO has erred in invoking penalty for inaccurate particulars in cases where two views are possible and Assessee has taken one of the possible views which is also supported by several judicial precedence.
>
> (d) That on the facts and in the circumstances of the case, and in law, the Ld. AO has erred in levying penalty on additions made on a legal issue.
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> 3. That on the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ['Ld. CIT(A), NFAC'] erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of land compensation and rehabilitation expenses without appreciating the fact that the said expenditure is revenue in nature and difference of opinion does not amount to furnishing of inaccurate particulars.
>
> 4. (a) That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty on disallowance of expenditure incurred on coal transportation by the Ex-Servicemen coal transporting companies made on ad-hoc basis without appreciating that penalty u/s.271(1)(c) should not be imposed for additions/ disallowances made on the basis of estimates.

(b) That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty without appreciating the fact that penalty was deleted by Ld. CIT(A) on similar issues in preceding years by observing that the disallowance is made on the basis of mere estimates, thereby violating the principle of consistency.

5. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty on disallowance of Compensation paid to employees based on actuarial valuation without appreciating that the claim is made by the Appellant by relying on several favorable judicial precedence.

6. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of depreciation claimed on building leased to Apollo Hospitals without appreciating the fact that the Assessee has correctly furnished all details of expenditure and disallowance was made merely due to difference of opinion.

7. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing of inaccurate particulars on account of LD penalty received without appreciating the fact that the said receipt is capital in nature and difference of opinion does not amount to furnishing of inaccurate particulars.

8. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of Provision on mine closure without appreciating that the claims made by the Appellant by relying on several favorable judicial precedence.

9. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of OBR expenses without appreciating the fact that the claim is made by the Appellant by relying on several favorable judicial precedence.

10. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of additions made due to short credit of interest income without appreciating the fact that Appellant has completely disclosed all relevant facts.

11. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing of

inaccurate particulars on account of disallowance of depreciation claimed on railway siding leased to Aryan Coal Beneficiation Pvt Ltd without appreciating the fact that the Appellant has correctly furnished all details of expenditure and disallowance was made merely due to difference of opinion.

12. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of excess claim of depreciation without appreciating the fact that the Appellant had completely and correctly furnished all relevant details of assets.

That the appellant craves leave to add and /or alter, amend, modify or rescind the grounds hereinabove before or at the hearing of this appeal."

100. Succinctly stated, the assessee company had filed its original return of income for A.Y. 2015-16 on 28.11.2015, declaring an income of Rs.549067.03 lacs (approx.). Subsequently, the case of the assessee was selected for scrutiny assessment under Sec.143(2) of the Act.

101. Original assessment was thereafter framed by the A.O vide his order passed under Sec.143(3) of the Act, dated 28.02.2017, wherein the income of the assessee company was assessed at Rs.718139.48 lacs(approx.) after, inter alia, making certain additions/ disallowances, which after being scaled down by the CIT(A) remained as under :-

S. No.	Particulars	Amount (Rs.in lakhs)
1.	Disallowance of land compensation and rehabilitation expenses	25666.00

2.	Disallowance of payment made to ESM transporters	14000.76
3.	Disallowance of compensation to employees based on actuarial valuation	31724.00
4.	Disallowance of depreciation claimed on Apollo hospital building	41.00
5.	Addition of amount received on account of LD penalty (by recharacterizing the same as a revenue receipt)	126.10
6.	Disallowance of provision for mine closure	4103.00
7.	Disallowance of overburden removal expenses	60555.00
8.	Addition made on account of short credit of interest income	3471.54
9.	Disallowance of depreciation claimed on railway siding	8.00
10.	Disallowance of assessee's claim of excess depreciation	81.42

102. The A.O while framing the assessment vide his order passed under Sec.143(3) of the Act, dated 28.02.2017 had also initiated penalty proceedings under Sec.271(1)(c) of the Act without specifying the default for which the impugned penalty was sought to be imposed, which for the sake of ready reference is culled out as under:

S. No.	Particulars	Mention of limb for initiating penalty in quantum assessment order dated 28.02.2017 passed u/s.143(3) of the Act
1.	Disallowance of land compensation and rehabilitation expenses	

2.	Disallowance of payment made to ESM transporters	No specific limb has been invoked while initiating penalty proceedings (AO's remark in the assessment order- Penalty u/s.271(1)(c) of the Act is separately initiated.
3.	Disallowance of compensation to employees based on actuarial valuation	
4.	Disallowance of depreciation claimed on Apollo hospital building	
5.	Addition of amount received on account of LD penalty (by recharacterizing the same as a revenue receipt)	
6.	Disallowance of provision for mine closure	
7.	Disallowance of overburden removal expenses	
8.	Addition made on account of short credit of interest income	
9.	Disallowance of depreciation claimed on railway siding	
10.	Disallowance of assessee's claim of excess depreciation	

Also, the A.O a/w. the assessment order issued a "Show Cause" notice (SCN) u/s. 274 r.w.s. 271(1)(c) of the Act dated 28.02.2017.

103. After the order passed by the CIT(Appeals), Bilaspur dated 31.03.2018 disposing off the quantum appeal of the assessee, the A.O vide a SCN, dated 03.09.2018 called upon the assessee company to explain that as to why penalty under Sec.271(1)(c) of the Act may not be imposed on it w.r.t. the additions/disallowances that were sustained by the CIT(A). As the reply filed by the assessee did not find favor with the A.O, therefore, he vide his order passed under Sec.271(1)(c) of the Act, dated 30.11.2018 saddled it with a penalty of

Rs. 85962.75 lacs for furnishing of inaccurate particulars of income w.r.t the aforesaid additions/disallowances, as under:

S. No.	Particulars	Mention of limb for levying penalty in penalty order dated 30.11.2018
1.	Disallowance of land compensation and rehabilitation expenses	For "furnishing inaccurate particulars of income"
2.	Disallowance of payment made to ESM transporters	
3.	Disallowance of compensation to employees based on actuarial valuation	
4.	Disallowance of depreciation claimed on Apollo hospital building	
5.	Addition of amount received on account of LD penalty (by recharacterizing the same as a revenue receipt)	
6.	Disallowance of provision for mine closure	
7.	Disallowance of overburden removal expenses	
8.	Addition made on account of short credit of interest income	
9.	Disallowance of depreciation claimed on railway siding	
10.	Disallowance of assessee's claim of excess depreciation	

104. At this stage, we may herein observe that though the A.O vide his SCN, dated 07.09.2018 had stated that penalty proceeding u/s.271(1)(c) w.r.t. additions/disallowances that were sustained by the CIT(Appeals) were initiated on the ground that the assessee company had concealed the particulars of income and also furnished

inaccurate particulars of income, but the said observation of the A.O is found to be factually incorrect. As observed by us hereinabove, a perusal of the assessment order passed by the A.O u/s.143(3) of the Act, dated 28.02.2017, therein reveals that the impugned proceedings u/s.271(1)(c) of the Act w.r.t. the aforesaid additions/disallowances under consideration were initiated by the A.O without specifying any default.

105. Aggrieved, the assessee assailed the order passed by the A.O under Sec.271(1)(c) of the Act, dated 30.11.2018 before the CIT(A), who sustained the order of the A.O, observing as under :-

> "**Issue No.-1**:- The AO noticed that there is a short credit on account of interest income which was also noticed in the earlier years. the assessee has claimed the credit of entire TDS deducted by the respective authorities, but has not offered the corresponding incomes for taxation. Therefore, the AO added back the entire amount of Rs. 34,50,00,000/- & Rs. 21,54,563/- by invoking the section 199 of the Act read with Rule 37BA of IT Rules clearly lay down the principle, credit of TDS in a particular year can be allowed only if the assessee discloses corresponding receipts in that year and the AO has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.
>
> The assessee company is not correct in not disclosing the accrued interest on the presumption of unforeseen happening and the period for contempt of Court also E- lapse because of limitation and on the facts that the assessee company did not leave any stone unturned" concluded that the AO has rightly added the amount of Rs. 34,50,00,000/- & Rs. 21,54,563/-. The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No.-2:- The AO in his assessment order found that the company has created provisions as per actuarial valuations against various heads of expenses. There were no names and addresses with each of whom these liabilities can be associated, which is totally contingent in nature and is also unascertainable. Therefore, these claims made by the assessee to the extent of actuarial value is not allowed. Under these observation AO disallowed the sum of Rs. 317,24,00,000/- and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

Taking into account the facts held that the provisions created for Rs. 317,24,00,000/- for future liabilities as provisions are not allowed as admissible expenditure. The penalty on this issue of the appellant is rightly decided by the AO and hence, the appeal is dismissed.

Issue No.-3:- The appellant has claimed an expenditure of Rs. 256,66,00,000/- as land compensation and rehabilitation expenses in the course of obtaining land for mining purpose. As per the assessment order the Assessing Officer has disallowed this claim of Rs. 256,66,00,000/- the expenditure made towards the compensation and rehabilitation. These payments were made towards main acquisition. Following the judgment of ITAT Nagpur, these expenses were disallowed as they are capital in nature. It is pertinent to mention that the claim of the expenditure is towards the acquiring complete rights of possession. This opinion was upheld by several courts as mentioned in the order of the CIT (Appeals), who decided the issue in favour of revenue. Respectfully following these judgments penalty levied on this issue is justified and the order of the Assessing Officer hence is confirmed.

Issue No.-4:- Assessee-company has claimed expenses of Rs. 560,03,07,468/-under the head payments of transportation. The AO observed that the rates of transportation paid to these companies were higher than those paid to other transporters. As the nature of work was same, such higher charges were clearly made for purposes other than commercial expediencies. Assessee has not furnished the required details such as the quantity transported and the rates charged by the ESM companies alongwith their names. As regards, the NON-ESM companies, the assessee has not furnished such details. With the above discussion assessing officer has disallowed 50% of expenses i.e. Rs. 280,01,53,734/- booked under this head and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

In the absence of complete and verifiable details, the AO has to resort to some estimates for allowance/disallowance of a particular expenditure, which has also been done in the present case by the AO by disallowing 50% of the total expenses of Rs. 560,03,07,468/- i.e. Rs. 280,01,53,734/-.

However Id. CIT(A), Bilaspur opined that the estimated disallowance made by the AO at the rate of 50% of the above expenditure is on the higher side, therefore, he restricted the disallowance to Rs. 140,00,76,867/- i.e. 25% of the total claim of Rs. 560,03,07,468/-. The Assessing Officer decision on this issue is confirmed. The penalty levied on this issue is justified to the extent of 25% and the Appeal stands partly allowed.

Issue No.-5:- Assessee has claimed depreciation of Rs. 41,00,000/- on building rented to M/s Apollo Hospital building for the purpose of running its clinic as a general hospital, open to all and not for exclusive use of the assessee. Whereas, as per the lease agreement between the Apollo Hospital and the assessee, the said building was given on lease for a period of 30 years. The assessee's attempt to pass rental income as business income was not correct, therefore, the AO disallowed the same and added it back to the income of the assessee and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

However, to clarify the matter further, during the course of hearing, it was clarified in the line of past years that the charging section 32 of the Act, for claim of depreciation, clearly specifies

In respect of depreciation of-
(i) buildings, machinery, plant or furniture, being tangible assets; (il) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,

owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed. Deprecation on such asset hence can't be allowed and the opinion of the Assessing Officer is found to be correct and no interference is made to the penalty order the appeal hence is dismissed.

Issue No.-6:- The AO in his assessment order mentioned that the assessee had received L.D penalty of Rs. 1,26,10,1861- imposed on parties due to late supply of plant & machineries. AO refuted the argument of the assessee by highlighting the facts that, damages, in the form of L D penalty, had been received by the assessee on account of belated supply of machineries. The penalty appears to have been received as compensation for the loss of profit, and therefore, was in the nature of a revenue receipt. In absence of any evidence there is no reason to accept the fact that a part of the total receipts was capital in nature. In absence of any reasonable and logical explanation to justify any loss borne by the assessee for delay in supply of machineries, the AO added back Rs. 1,26,10,186/- to the income of the assessee. Since the income was under reported to the extent of Rs. 1,26,10,1861- concealment penalty was levied and is justified and hence, the appeal on this issue is dismissed.

Issue No.-7:- The AO in his assessment order observed by that the 'provision for mine closure at Rs. 41,03,00,000/- was separately claimed as deduction. On being asked by the AO, assessee justified the claim of provision for mine closure by quoting guideline set out by the Ministry of Coal in this regard. However, AO carefully examined the guidelines and made certain observations denying the claim to the assessee, impugned fund was neither created nor set aside during the year, No expenditure to the extent was actually incurred, impugned claim of Rs. 41,03,00,000/-has no direct nexus with the income of the assessee, The fund so created is supposed to be reversed back in the hands of the assessee before the expenditure, Further complications will arise in that year as there will be some mismatch between actual expenditure and accumulated fund created out of estimated profits. AO disallowed the sum of Rs. 41,03,00,000/- and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No.-8:- The AO in his assessment order mentioned that OBR adjustment of Rs. 605,55,00,000/- was claimed by the assessee in its P&L account, similar claim was made in previous years. This claim was made on the basis of creation of a charge formulated by M/s Coal India Ltd. for its subsidiaries by employing a system of accounting called Over Burden Removal Accounting". According to this system "OBR

adjustment" was worked out on the basis of expected life time of a mine and approximate over burden to be removed during such life time. The claim made by the assessee that such a notional charge helps in spreading over burden removal cost over the life span of a mine is misleading while taxation of actual profit is concerned. Accordingly, amount of Rs. 605,55,00,000/- was disallowed and added back to the income of the assessee and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

After taking into account the facts it can be held that, since this issue had been agitated for quite a long period and the assessee had been cleverly taking the expenditure which is met directly or indirectly by the Ministry of Coal to the balance sheet itself and debiting the whole amount in the P & L account is not legal. The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No.-9:- Assessee has claimed depreciation of Rs. 8,00,000/- on assets leased to M/s Aryan Coal Beneficiation Pvt. Ltd. for to be used as a railway siding. The AO found that as per the lease agreement it appeared that the railway siding was given on a lease for a period of 20 years. The assessee's attempt to pass rental income as business income was not correct, therefore, the AO disallowed the same and added it back to the income of the assessee and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

After taking into account the facts it is held that AO has rightly disallowed the claim of depreciation on the leased assets and the same not being admissible deduction therefore, confirmed addition of Rs. 8,00,000/-. The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No.-10:- Addition on account of excess depreciation wrongly claimed @40%: AO during the course of assessment proceedings found that assessee has claimed depreciation on some vehicles @ 40% which the assessee itself admitted that has been wrongly claimed instead of depreciation rate @15%. Thus, on this count an addition of Rs. 81,42,380/- was made to the income of the assessee and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

> The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed."

106. The assessee company being aggrieved with the order of the CIT(Appeals) who had upheld the penalty imposed by the Assessing Officer u/s 271(1)(c) of the I.T Act has carried the matter in appeal before us. It was submitted by the ld. A.R that the A.O had issued two "Show cause" notices (SCN) to the assessee company under Sec. 274 r.w.s 271(1)(c) of the Act, dated 28.02.2017, Annexure-A of the assessee's compilation and dated 07.09.2018, Annexure-B of the assessee's compilation. It was the claim of the ld. A.R that as the Assessing Officer had failed to clearly point out the specific default in both the "Show Cause" notices (herein referred to as 'SCN's) issued u/s 274 r.w.s 271 of the Act, dated 28.02.2017 (supra) and dated 07.09.2018 (supra), therefore, the penalty thereafter imposed by him u/s 271(1)(c) of the I.T. Act cannot be sustained and is liable to be vacated. The ld. AR in order to drive home his aforesaid claim had drawn our attention to both the aforesaid SCN's, dated 28.02.2017 and 07.09.2018. Referring to the aforesaid discrepancy in the SCN's, dated 28.02.2017 and 07.09.2018, it was submitted by the ld. AR that as the AO had failed to validly put the assessee to notice as regards

the default for which the impugned penalty under Sec. 274 r.w.s 271(1)(c) was sought to be imposed on it, therefore, the assessee had remained divested of an opportunity to put forth in its defense a clear explanation that no such penalty u/s 271(1)(c) was called for in its case. The ld. AR in support of his aforesaid contention had relied on a host of judicial pronouncements, as under:

(i). CIT Vs. Manjunatha Cotton & Ginning Factory
(2013) 35 taxmann.com 250 (Karnataka)

(ii). Mohd. Farhan A. Shaikh Vs. PCIT
(2021) 434 ITR 1 (Bombay)(FB)

(iii). CIT Vs. Samson Perinchery
(2007) 392 ITR 4 (Bombay)

(iv). Pr. CIT (Central) Vs. Golden Peace Hotels and Resorts (P) Ltd.
(2021) 124 tamnn.com 249 (SC)

(v). PCIT Vs. Goa Coastal Resorts and Recreation (P) Ltd.
(2021) 130 taxmann.com 379 (SC)

(vi). Dilip N. Shroff Vs. JCIT
(2007) 161 Taxman 218 (SC).

107. Per contra, the Ld. Departmental Representative (for short 'D.R') relied upon the orders of the lower authorities. It was submitted by the Ld. D.R that as the assessee company was afforded sufficient opportunity by the A.O in the course of penalty proceedings, thus, it

was incorrect on its part to claim that no opportunity of being heard was afforded to it. It was submitted by the ld. D.R that now when the assessee company in compliance to the SCN, dated 28.02.2017 r.w SCN, dated 07.09.2018 had vide its reply filed in the course of the penalty proceedings on 10.10.2018 come forth with an explanation that no penalty u/s 271(1)(c) of the Act was called for in its hands, therefore, it was beyond comprehension that as to on what basis it could thereafter claim that it was not validly put to notice about the default for which penalty u/s 271(1)(c) of the Act was sought to be imposed on it.

108. We have heard the ld. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Admittedly, on a perusal of the SCN, dated 28.02.2017, it stands revealed that the Assessing Officer had failed to strike-off the irrelevant default while calling upon the assessee company to explain as to why it may not be subjected to penalty u/s 271(1)(c) of the Act. For the sake of clarity, the SCN dated 28.02.2017

(as per Annexure A of the assessee's compilation) is culled out as under:

NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

Deputy Commissioner of Income-tax,
Circle-1(1), Mahima Complex,
Bilaspur (CG)

PAN:- AADCS2066E

To,

Dated: **28/02/2017**

M/s South Eastern Coalfields Limited.,
Seepat Road,
Bilaspur (C.G.) 495006

Whereas in the course of proceedings before me for the assessment year **2015-16.** It appears to me that you:-

*~~have~~ without reasonable cause failed to furnish me return of income which you were required to furnish by a ~~notice given~~ under Section 22(1)/22(2)/34 of the Indian Income-tax Act, 1922 or which you were required to furnish ~~under~~ Section 139(1) or by a notice given under Section 139(2)/148 of the Income-tax Act, 1961, No ..... dated ..... or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said Section 139(1) or by such notice.

*have without reasonable cause failed to comply with a ~~notice~~ under Section 22(4)/23(2) of the Indian Income-tax Act, 1922 or under Section 142(1)/1 143(2) of the Income-tax Act, 1961.
No. ..... dated .....

***have concealed the particulars of your Income or furnished inaccurate particulars of such Income.**

You are hereby requested to appear before me at **03:30 P.M.** on **24/03/2017** and show cause why an order imposing a penalty on you should not be made under Section 271 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 show cause in writing on or before the said date which will be considered before any such order is made under Section 271(1)(c).

Assessing Officer

(Seal)

Dy. Commissioner of Income Tax, Circle-1(1), Bilaspur (C.G.)

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It may further be observed that the aforesaid SCN, dated 28.02.2017 (supra) was thereafter followed by another SCN, dated 07.09.2018 (supra). However, in the SCN, dated 07.09.2018 the A.O had called

upon the assessee company to explain that as to why penalty u/s.271(1)(c) of the Act may not be imposed upon it for "concealing the particulars of income" and "furnishing of inaccurate particulars of income" w.r.t. the additions/disallowances that were sustained by the CIT(Appeals). Once again, for the sake of clarity, the SCN dated 07.09.2018 (as per Annexure B of the assessee's compilation) is culled out as under:

Office of the
Assistant Commissioner of Income Tax,
Circle-1(1), Mahima Commercial Complex,
Vyapar Vihar, Bilaspur (C.G.) 495001
Phone/fax-07752261121 Email:bilaspur.dcit1.1@incometax.gov.in

F.No. ACIT, Cir.1(1)/BSP/ Penalty/2018-19/ Dated:- 07/09/2018

To,

M/s South Eastern Coalfileds Limited,
Seepat Road, Bilaspur

Subject:- Show-cause notice of Penalty u/s 271(1)(c) of the I.T.Act,1961- Reg

Please refer to the above.

In this context, the penalty u/s 271(1)(c) of the I.T.Act, 1961 was initiated during assessment proceeding for the A.Y.2015-16 and notice u/s 274 r.w.s.271 of the I.T.Act, 1961 was issued on 28/02/2017 and case was fixed for hearing on 24/03/2017. In response of notice, you have filed submission and requested that the penalty proceeding has to be kept abeyance till the decision of the CIT(A), Bilaspur.

The Ld. CIT(A), Bilaspur has passed order on 31/03/2018 and partly allowed the additions made by the AO and the order has received in this on 19/07/2018. Since, penalty u/s 271(1)(c) was initiated on these additions on the grounds of the assessee has concealed the particulars of income and also furnished inaccurate particulars of income. Therefore, you are hereby requested to appear before me at 11:00 A.M. on 24/09/2018 and show cause why an order imposing a penalty on you should not be passed under Section 271 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 show cause in writing on or before the said date which will be considered before any such order is passed under Section 271(1)(c).

Dy. Asstt. Commissioner of Income Tax ★ Circle-1(1), Bilaspur ★

(Ashutosh Singh)
Assistant Commissioner of Income Tax,
Circle-1(1), Bilaspur

It is neither the claim of the department nor a fact that the A.O had while framing the assessment initiated the penalty proceedings u/s.271(1)(c) on both the limbs, viz. "concealment of income" and "furnishing of inaccurate particulars of income" w.r.t. the multiple additions/disallowances which thereafter had been sustained by the CIT(Appeals). Our aforesaid conviction is fortified by the fact that not only the A.O while initiating the penalty proceedings u/s.271(1)(c) in the body of the assessment order had failed to specify either of default/limb but in fact had imposed the penalty for all the said additions/disallowances for "furnishing of inaccurate particulars of income." Insofar the validity of the jurisdiction assumed by the A.O for imposing penalty u/s 271(1)(c) is concerned, we find that the same has been assailed before us on the ground that as the A.O had failed to point out the specific default for which penalty u/s.271(1)(c) was sought to be imposed in the aforesaid "Show cause" notice(s), dated 28.02.2017 and 07.09.2018, therefore, the assessee company was not validly put to notice as regards the default for which it was called upon to explain that as to why penalty may not be imposed on it under Sec. 271(1)(c) of the I.T Act.

109. We have given a thoughtful consideration to the facts of the case, and are persuaded to subscribe to the claim of the assessee that the A.O in both the aforesaid SCN's dated 28.02.2017 and 07.09.2018 had failed to point out the specific default for which penalty was sought to be imposed on the assessee. In our considered view, as both of the two defaults envisaged in Sec. 271(1)(c) of the Act i.e "concealment of income" and "furnishing of inaccurate particulars of income" are separate and distinct defaults which operate in their independent and exclusive fields, therefore, it was obligatory for the A.O to have clearly put the assessee to notice as regards the default for which it was being called upon to explain that as to why penalty under Sec. 271(1)(c) may not be imposed on it. As observed by us hereinabove, a perusal of the "Show cause" notice(s) issued in the present case by the A.O under Sec. 274 r.w. Sec. 271(1)(c), dated 28.02.2017 and 07.09.2018 clearly reveals that there was no application of mind by the A.O while issuing the same. We are of a strong conviction that the very purpose of affording a reasonable opportunity of being heard to the assessee as per the mandate of Sec. 274(1) of the Act would not only be frustrated, but in fact would be rendered as redundant if an assessee is not conveyed in clear terms the specific default for which penalty under

the said statutory provision was sought to be imposed on it. In our considered view, the indispensable requirement for the A.O to put the assessee to notice as regards the specific charge contemplated under the aforesaid statutory provision viz. 'concealment of income' or 'furnishing of inaccurate particulars of income' is not merely an idle formality but is a statutory obligation cast upon him, which we find had not been discharged in the present case as per the mandate of law.

110. As we have while disposing off the appeal of the assessee for A.Y.2009-10 in ITA No.156/RPR/2014 dealt with at length on the validity of the jurisdiction assumed by the A.O for imposing penalty u/s.271(1)(c) of the Act on an assessee without pointing out in the "Show cause" notice (SCN) issued u/s.274 r.w.s. 271(1)(c) of the Act the specific default for which penalty was sought to be imposed in its case, therefore, the view therein taken by us will apply *mutatis mutandis* for disposing off the present appeal of the assessee for A.Y.2015-16 in ITA No.41/RPR/2023. Therefore, in the backdrop of our aforesaid observations, as the A.O in the present case also had imposed penalty u/s.271(1)(c) without pointing out in the SCN dated 28.02.2017 and 07.09.2018 the specific default for which penalty was

sought to be imposed, therefore, the penalty of Rs.85962.75 lacs (approx.) is on the same terms and reasoning vacated.

111. Resultantly, the appeal filed by the assessee company in ITA No.41/RPR/2013 for A.Y.2015-16 is allowed in terms of our aforesaid observations.

ITA No.42/RPR/2023 (Assessee's appeal)
A.Y.2016-17

112. We shall now take up the appeal filed by the assessee company for A.Y.2016-17, wherein the impugned order has been assailed on the following grounds of appeal before us:

> "1. That on the facts and in the circumstances of the case and in law, impugned penalty order dated 04 February, 2019 passed by the Learned Assistant Commissioner of Income Tax, Circle-1(1), Bilaspur ('Ld. A.O) levying penalty under section 271(1)(c) of the Act is bad in law and liable to be quashed.
>
> 2. (a) That, on the facts and in the circumstances of the case and in law, the Ld. AO erred in initiating penalty proceeding without specifying whether it is for concealment of income or furnishing inaccurate particulars of income.
>
> (b) That on the facts and in the circumstances of the case, the Ld. AO has erred in invoking penalty for inaccurate particulars in cases where two views are possible and Assessee has taken one of the possible views which is also supported by several judicial precedence.
>
> (c) That on the facts and in the circumstances of the case, and in law, the Ld. AO has erred in levying penalty on additions made on a legal issue.

3. That on the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ['Ld. CIT(A), NFAC'] erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of land compensation and rehabilitation expenses without appreciating the fact that the said expenditure is revenue in nature and difference of opinion does not amount to furnishing of inaccurate particulars.

4. (a) That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty on disallowance of expenditure incurred on coal transportation by the Ex-Servicemen coal transporting companies made on ad-hoc basis without appreciating that penalty u/s.271(1)(c) should not be imposed for additions/ disallowances made on the basis of estimates.

(b) That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty without appreciating the fact that penalty was deleted by Ld. CIT(A) on similar issues in preceding years by observing that the disallowance is made on the basis of mere estimates, thereby violating the principle of consistency.

5. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of depreciation claimed on building leased to Apollo Hospitals without appreciating the fact that the assessee had correctly furnished all details of expenditure and disallowance was made merely due to difference of opinion.

6. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing of inaccurate particulars on account of LD penalty received without appreciating the fact that the said receipt is capital in nature and difference of opinion does not amount to furnishing of inaccurate particulars.

7. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of Provision on mine closure without appreciating that the claims made by the Appellant by relying on several favorable judicial precedence.

8. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of disallowance of OBR expenses without appreciating the fact that the claim is made by the Appellant by relying on several favorable judicial precedence.

> 9. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing inaccurate particulars on account of additions made due to short credit of interest income without appreciating the fact that Appellant has completely disclosed all relevant facts.
>
> 10. That on the facts and in the circumstances of the case, the Ld. CIT(A), NFAC erred in confirming the penalty for furnishing of inaccurate particulars on account of disallowance of depreciation claimed on railway siding leased to Aryan Coal Beneficiation Pvt Ltd without appreciating the fact that the Appellant has correctly furnished all details of expenditure and disallowance was made merely due to difference of opinion.
>
> 11. That the appellant craves leave to add and /or alter, amend, modify or rescind the grounds hereinabove before or at the hearing of this appeal."

113. Succinctly stated, the assessee company had filed its original return of income for A.Y. 2016-17 on 29.11.2016, declaring an income of Rs.568979.43 lacs (approx.). Subsequently, the case of the assessee was selected for scrutiny assessment under Sec.143(2) of the Act.

114. Original assessment was thereafter framed by the A.O vide his order passed under Sec.143(3) of the Act, dated 02.02.2018, wherein the income of the assessee was determined at Rs.723597.78 lacs (approx.) after, inter alia, making certain additions/disallowances, which after being scaled down by the CIT(A) remained as under :-

S. No.	Particulars	Amount (Rs.in lakhs)

1.	Disallowance of land compensation and rehabilitation expenses	19736.00
2.	Disallowance of payment made to ESM transporters	10839.68
3.	Disallowance of depreciation on Apollo hospital building	54.00
4.	Addition made on account of receipts of LD penalty (by recharacterizing the same as a revenue receipt)	471.07
5.	Disallowance of provision for mine closure	11378.00
6.	Disallowance of over burden removal expenses	81660.00
7.	Addition made on account of short credit of interest income	2401.77
8.	Disallowance of depreciation claimed on railway siding	119.00

115. The A.O while framing the assessment vide his order passed under Sec.143(3) of the Act, dated 02.02.2018 had also initiated penalty u/s.271(1)(c) of the Act alleging furnishing of inaccurate particulars of income, and also without specifying any default by the assessee as regards the aforesaid additions/disallowances, as under:

S. No.	Particulars	Mention of limb for initiating penalty in quantum assessment order dated 02.02.2018 passed u/s.143(3) of the Act

1.	Disallowance of land compensation and rehabilitation expenses	For "furnishing of inaccurate particulars of income"
2.	Disallowance of payment made to ESM transporters	For "furnishing of inaccurate particulars of income"
3.	Disallowance of depreciation on Apollo hospital building	For "furnishing of inaccurate particulars of income"
4.	Addition made on account of receipts of LD penalty (by recharacterizing the same as a revenue receipt)	No specific limb has been invoked while initiating penalty proceedings (AO's remark in the assessment order-"penalty u/s.271(1)(C) of the Act is separately initiated."
5.	Disallowance of provision for mine closure	For "furnishing of inaccurate particulars of income"
6.	Disallowance of over burden removal expenses	For "furnishing of inaccurate particulars of income"
7.	Addition made on account of short credit of interest income	For "furnishing of inaccurate particulars of income"
8.	Disallowance of depreciation claimed on railway siding	For "furnishing of inaccurate particulars of income"

Also, the A.O a/w. the assessment order had issued a "Show Cause" notice (SCN) u/s.274 r.w.s. 271(1)(c) of the Act dated 02.02.2018.

116. After the order passed by the CIT(A), dated 28.12.2018 disposing off the quantum appeal of the assessee, the A.O vide a SCN, dated 07.01.2019 called upon the assessee to explain as to why penalty

under Sec.271(1)(c) of the Act may not be imposed on it w.r.t. the additions/disallowances that were sustained by the CIT(A). As the reply filed by the assessee did not find favor with the A.O, therefore, he vide his order passed under Sec.271(1)(c) of the Act, dated 04.02.2019 saddled it with a penalty of Rs. 77895.61 lacs (approx.) for furnishing of inaccurate particulars of income w.r.t the aforesaid additions/disallowances that were sustained/upheld by the CIT(Appeals), as under:

S. No.	Particulars	Mention of limb for levying penalty in penalty order dated 04.02.2019
1.	Disallowance of land compensation and rehabilitation expenses	For "furnishing of inaccurate particulars of income"
2.	Disallowance of payment made to ESM transporters	No specific limb has been invoked while imposing penalty
3.	Disallowance of depreciation on Apollo hospital building	For "furnishing of inaccurate particulars of income"
4.	Addition made on account of receipts of LD penalty (by recharacterizing the same as a revenue receipt)	For "furnishing of inaccurate particulars of income"
5.	Disallowance of provision for mine closure	No specific limb has been invoked while imposing penalty
6.	Disallowance of over burden removal expenses	No specific limb has been invoked while imposing penalty
7.	Addition made on account of short credit of interest income	No specific limb has been invoked while imposing penalty

8.	Disallowance of depreciation claimed on railway siding	For "furnishing of inaccurate particulars of income"

117. Aggrieved, the assessee assailed the order passed by the A.O under Sec.271(1)(c) of the Act, dated 04.02.2019 before the CIT(A), who sustained the order of the A.O, observing as under :-

> "**Issue No.-1**:- The AO noticed that there is a short credit on account of interest income which was also noticed in the earlier years the assessee has claimed the credit of entire TDS deducted by the respective authorities, but has not offered the corresponding incomes for taxation. Therefore, the AO added back the entire amount of Rs. 24,01,77,072/- by invoking the section 199 of the Act read with Rule 37BA of IT Rules clearly lay down the principle, credit of TDS in a particular year can be allowed only if the assessee discloses corresponding receipts in that year and the AO has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.
>
> The appellant has claimed TDS on income that was not offered to tax. This amounts to underreporting by false claim which warrants penalty. The penalty order of the Assessing Officer hence sustained.
>
> **Issue No.-2:-** The appellant has claimed an expenditure of Rs.197,36,00,000/- as land compensation and rehabilitation expenses in the course of obtaining land for mining purpose. As per the assessment order the Assessing Officer has disallowed this claim of Rs. 197,36,00,000/- the expenditure made towards the compensation and rehabilitation. These payments were made towards main acquisition. Following the judgment of ITAT Nagpur, these expenses were disallowed as they are capital in nature. It is pertinent to mention that the claim of the expenditure is towards the acquiring complete rights of possession. This opinion was upheld by several courts as mentioned in the order of the CIT (Appeals), who decided the issue in favour of revenue. Respectfully following these judgments penalty levied on this issue is justified and the order of the Assessing Officer hence is confirmed.
>
> **Issue No.-3:**- The AO in his assessment order mentioned that the assessee had received L.D penalty of Rs. 4,71,07,024/-

imposed on parties due to late supply of plant & machineries. AO refuted the argument of the assessee by highlighting the facts that, damages, in the form of LD penalty, had been received by the assessee on account of belated supply of machineries. The penalty appears to have been received as compensation for the loss of profit, and therefore, was in the nature of a revenue receipt. In absence of any evidence there is no reason to accept the fact that a part of the total receipts was capital in nature. In absence of any reasonable and logical explanation to justify any loss borne by the assessee for delay in supply of machineries, the AO added back Rs. 4,71,07,024/- to the income of the assessee. Since the income was under reported to the extent of Rs. 4,71,07,024/-concealment penalty was levied and is justified and hence, the appeal on this issue is dismissed.

Issue No.-4:- The AO in his assessment order observed by that the 'provision for mine closure at Rs. 11,37,80,000/- was separately claimed as deduction. On being asked by the AO, assessee justified the claim of provision for mine closure by quoting guideline set out by the Ministry of Coal in this regard. However, AO carefully examined the guidelines and made certain observations denying the claim to the assessee, impugned fund was neither created nor set aside during the year, No expenditure to the extent was actually incurred, impugned claim of Rs. 11,37,80,000/- has no direct nexus with the income of the assessee, The fund so created is supposed to be reversed back in the hands of the assessee before the expenditure, Further complications will arise in that year as there will be some mismatch between actual expenditure and accumulated fund created out of estimated profits. AO disallowed the sum of Rs. 11,37,80,000/- and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No.-5:- The AO in his assessment order mentioned that OBR adjustment of Rs. 816,60,00,000/- was claimed by the assessee in its P&L account, similar claim was made in previous years. This claim was made on the basis of creation of a charge formulated by M/s Coal India Ltd. for its subsidiaries by employing a system of accounting called "Over Burden Removal Accounting". According to this system "OBR adjustment" was worked out on the basis of expected life time of a mine and approximate over burden to be removed during such life time. The claim made by the assessee that such a

notional charge helps in spreading over burden removal cost over the life span of a mine is misleading while taxation of actual profit is concerned. Accordingly, amount of Rs, 816,60,00,000/- was disallowed and added back to the income of the assessee and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

After taking into account the facts it can be held that, since this issue had been agitated for quite a long period and the assessee had been cleverly taking the expenditure which is met directly or indirectly by the Ministry of Coal to the balance sheet itself and debiting the whole amount in the P & L account is not legal. The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed.

Issue No.-6:- Assessee has claimed depreciation of Rs. 54,00,000/- on building rented to M/s Apollo Hospital building for the purpose of running its clinic as a general hospital, open to all and not for exclusive use of the assessee. Whereas, as per the lease agreement between the Apollo Hospital and the assessee, the said building was given on lease for a period of 30 years. The assessee's attempt to pass rental income as business income was not correct, therefore, the AO disallowed the same and added it back to the income of the assessee and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.
However, to clarify the matter further, during the course of hearing, it was clarified in the line of past years that the charging section 32 of the Act, for claim of depreciation, clearly specifies

In respect of depreciation of-

(i) buildings, machinery, plant or furniture, being tangible assets; (il) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,

Owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed. Deprecation on such asset hence can't be allowed and the opinion of the Assessing Officer is found to be correct and no interference is made to the penalty order the appeal hence is dismissed.

Issue No.-7:- Assessee-company has claimed expenses of Rs. 433,58,75,758/-under the head payments of transportation. The AO observed that the rates of transportation paid to these companies were higher than those paid to other transporters. As the nature of work was same, such higher charges were clearly made for purposes other than commercial expediencies. Assessee has not furnished the required details such as the quantity transported and the rates charged by the ESM companies alongwith their names. As regards, the NON-ESM companies, the assessee has not furnished such details. With the above discussion assessing officer has disallowed 50% of expenses i.e. Rs. 216,79,37,8801- booked under this head and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

In the absence of complete and verifiable details, the AO has tc resort to some estimates for allowance/disallowance of a particular expenditure, which has also been done in the present case by the AO by disallowing 50% of the total expenses of Rs. 433,58,75,758/- i.e. Rs. 216,79,37,880/-.

However Id. CIT(A), Bilaspur opined that the estimated disallowance made by the AO at the rate of 50% of the above expenditure is on the higher side, therefore, he restricted the disallowance to Rs. 108,39,68,940/- i.e. 25% of the total claim of Rs. 433,58,75,758/-. The Assessing Officer decision on this issue is confirmed. The penalty levied on this issue is justified to the extent of 25% and the Appeal stands partly allowed.

Issue No.-8:- Assessee has claimed depreciation of Rs. 119,00,000/- on assets leased to M/s Aryan Coal Beneficiation Pvt. Ltd. for to be used as a railway siding. The AO found that as per the lease agreement it appeared that the railway siding was given on a lease for a period of 20 years. The assessee's attempt to pass rental income as business income was not correct, therefore, the AO disallowed the same and added it back to the income of the assessee and has also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

After taking into account the facts it is held that AO has rightly disallowed the claim of depreciation on the leased assets and the same not being admissible deduction therefore, confirmed addition of Rs. 119,00,000/-. The penalty levied on this issue is justified and hence, the appeal on this issue is dismissed."

118. The assessee being aggrieved with the order of the CIT(Appeals) who had upheld the penalty imposed by the Assessing Officer u/s 271(1)(c) of the I.T Act has carried the matter in appeal before us. It was submitted by the ld. A.R that the A.O had issued two "Show cause" notices (SCN) to the assessee company under Sec. 274 r.w.s 271(1)(c) of the Act, dated 02.08.2018, Annexure-C of the assessee's compilation and dated 07.01.2019, Annexure-D of the assessee's compilation. At this stage, we may herein observe that as stated by the Ld. AR, and, rightly so, the second SCN was though actually issued by the A.O u/s.274 r.w.s. 271(1)(c) on 07.01.2019, but the same in the body of the said notice is wrongly dated as 02.02.2018 (i.e. the date of earlier SCN). The aforesaid fact is fortified on two fold basis, viz. (i) the SCN, (i.e. Annexure D of assessee's compilation) is digitally signed by the A.O on 07.01.2019; and (ii) that the A.O in the body of the penalty order had clearly stated that after receipt of order of the CIT(Appeals), Bilaspur a SCN dated 07.01.2019 u/s.271(1)(c) of the Act was issued to the assessee. For the sake of clarity, the relevant extract of the order of the A.O u/s. 271(1)(c), dated 04.02.2019 is culled out as under:

> "3. After receipt of order of CIT(A), Bilaspur a show cause notice under section 271(1)(c) of the Act dated 07.01.2019, which was duly served upon the assessee to explain as to why penalty u/s.271(1)(c) of the I.T Act, 1961 should not be imposed on the

> points of additions on which penalty u/s.271(1)(c) has been initiated and the same have been sustained by the order of the CIT(A), Bilaspur. In response to the show cause notice, the assessee company has requested for a short adjournment. Then the case was re-fixed on 15.01.2019. On the dates of hearing, Mr. Anand Bakshi, Sr. Manager Finance, Mr. Bidyut Sarkar and CA Shri Vinod Khatri on behalf of the company attended and submitted written replies which were perused and have been placed on record. Reply submitted discussed with them in detail."

119. On a careful perusal of the aforesaid SCN, dated 02.02.2018 (supra) and 07.01.2019 (supra), it stands revealed that though the A.O had initially validly put the assessee company to notice vide his SCN dated 02.02.2018 that the penalty proceedings u/s.271(1)(c) were being initiated for a specific default, i.e. "furnishing of inaccurate particulars of income" but thereafter, vide the subsequent SCN, dated 07.01.2019 had clearly confused the issue, and had called upon the assessee company to put forth an explanation that as to why penalty u/s.271(1)(c) may not be imposed upon it for "concealing the particulars of income" and "furnishing of inaccurate particulars of income. It was the claim of the ld. A.R that as the Assessing Officer had failed to point out the specific default in the "Show Cause" notice (herein referred to as 'SCN') issued u/s 274 r.w.s 271 of the Act, dated 07.01.2019 (supra) and had left the assessee company guessing about the default for which penalty u/s.271(1)(c) of the Act was sought to

be imposed, therefore, the penalty thereafter imposed by him cannot be sustained and is liable to be vacated. The ld. AR in order to drive home his aforesaid claim had drawn our attention to the aforesaid SCN, dated 07.01.2019. Referring to the aforesaid discrepancy in the SCN, dated 07.01.2019, it was submitted by the ld. AR that as the AO had failed to validly put the assessee to notice as regards the specific default for which the impugned penalty under Sec. 274 r.w.s 271(1)(c) was sought to be imposed, therefore, the assessee company had remained divested of an opportunity to put forth in its defense a clear explanation that no such penalty u/s 271(1)(c) was called for in its case. The ld. AR in support of his aforesaid contention had relied on a host of judicial pronouncements, as under:

(i). CIT Vs. Manjunatha Cotton & Ginning Factory
(2013) 35 taxmann.com 250 (Karnataka)

(ii). Mohd. Farhan A. Shaikh Vs. PCIT
(2021) 434 ITR 1 (Bombay)(FB)

(iii). CIT Vs. Samson Perinchery
(2007) 392 ITR 4 (Bombay)

(iv). Pr. CIT (Central) Vs. Golden Peace Hotels and Resorts (P) Ltd.
(2021) 124 tamnn.com 249 (SC)

(v). PCIT Vs. Goa Coastal Resorts and Recreation (P) Ltd.
(2021) 130 taxmann.com 379 (SC)

(vi). Dilip N. Shroff Vs. JCIT
(2007) 161 Taxman 218 (SC).

120. Per contra, the Ld. Departmental Representative (for short 'D.R') relied upon the orders of the lower authorities. It was submitted by the Ld. DR that the A.O had vide his SCN, dated 02.02.2018 (supra) that was issued a/w. the assessment order validly put the assessee to notice and called for an explanation that as to why it may not be subjected to penalty u/s.271(1)(c) for having furnished inaccurate particulars of income. It was further submitted by the Ld. D.R that as the assessee was afforded sufficient opportunity by the A.O in the course of penalty proceedings, thus, it was incorrect on its part to claim that no opportunity of being heard was afforded to it. It was submitted by the ld. D.R that now when the assesee in compliance to the SCN, dated 02.02.2018 r.w SCN, dated 07.01.2019 had vide its reply filed in the course of the penalty proceedings, i.e. on 24.10.2019 come forth with an explanation that no penalty u/s 271(1)(c) of the Act was called for in its hands, therefore, it was beyond comprehension that as to on what basis it could thereafter claim that it was not validly put to notice about the default for which penalty u/s 271(1)(c) of the Act was sought to be imposed on it. However, the Ld. DR could not

rebut the claim of the assessee's counsel that the assessee pursuant to SCN, dated 07.01.2019 was not validly put to notice about the specific default for which penalty u/s.271(1)(c) was being proceeded with and was sought to be imposed on it and thus, was left guessing on the said aspect.

121. We have heard the ld. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Admittedly, it is a matter of fact borne from record that the A.O vide his SCN, dated 02.02.2018 that was issued a/w. the assessment order had validly put the assessee to notice, and had called upon it to explain as to why it may not be saddled with penalty u/s.271(1)(c) of the Act for having furnished inaccurate particulars w.r.t. the additions/disallowances that were made by him while framing the assessment. For the sake of clarity, the SCN, dated 02.02.2018 issued u/s.274 r.w.s. 271(1)(c) is culled out as under:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
DCIT 1(1), BILASPUR

To,
SOUTH EASTERN COALFIELDS LIMITED
SEEPAT ROAD SEEPAT ROAD , SEEPAT ROAD
SEEPAT ROAD 495006, Chhattisgarh
India

PAN:	Assessment Year:	Date:	Notice No. :
AADCS2066E	2016-17	02/02/2018	ITBA/PNL/S/271(1)(c)/2017-18/1008622811(1)

Notice under section 274 read with section 271(1)(c) of the Income Tax Act, 1961

Sir/ Madam,

Whereas in the course of proceedings before me for the Assessment Year **2016-17**, it appears to me **that you have furnished inaccurate particulars of income.**

You are hereby requested to appear before me either personally or through a duly authorised representative at **11:00 AM** on **26/02/2018** and show cause why an order imposing a penalty on you should not be made under section **271(1)(c)** of the Income Tax Act, 1961.

If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made under section **271(1)(c)** of the Income Tax Act, 1961.

RITUPARN NAMDEO
DCIT 1(1), BILASPUR
(Rituparn Namdeo)
Jt. Commissioner of Income Tax (OSD)
Circle 1(1), Bilaspur (C.G.)
(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

74
160

Recd 07/2/2018

Note: The date of digital signature may be taken as date of document
AAYAKAR BHAWAN, VYAPAR VIHAR, BILASPUR, BILASPUR, Chhattisgarh, 495001
Email: BILASPUR.DCIT1.1@INCOMETAX.GOV.IN,

This document is digitally signed
Signer: RITUPARN NAMDEO
Date: Friday, February 02, 2018 2:41 PM
Location: BHOPAL, India

However, we cannot remain oblivion of the fact that the A.O after receipt of the order of the CIT(Appeals), dated 28.12.2018, had vide his SCN, dated 07.01.2019 (supra) called upon the assessee company to show cause that as to why penalty u/s.271(1)(c) of the Act may not

be imposed upon it for having "concealed the particulars of income" and "furnished inaccurate particulars of such income." Again, for the sake of clarity, the SCN, dated 07.01.2019 (wrongly dated 02.02.2018) issued u/s. 274 r.w.s. 271(1)(c) of the Act is culled out as under:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
DCIT 1(1), BILASPUR

To,
SOUTH EASTERN COALFIELDS LIMITED
SEEPAT ROAD, SEEPAT ROAD SEEPAT ROAD
BILASPUR 495006, Chhattisgarh
India

PAN:	Assessment Year:	Date:	Notice No. :
AADCS2066E	2016-17	02/02/2018	ITBA/PNL/S/271(1)(c)/2018-19/1014706097(1)

Notice under section 274 read with section 271(1)(c) of the Income Tax Act, 1961

Sir/ Madam,

Whereas in the course of proceedings before me for the Assessment Year **2016-17**, it appears to me **that you have concealed the particulars of income and furnished inaccurate particulars of such income.**

You are hereby requested to appear before me either personally or through a duly authorised representative at **11:00 AM** on **15/01/2019** and show cause why an order imposing a penalty on you should not be made under section **271(1)(c)** of the Income Tax Act, 1961.

If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative you may show cause in writing on or before the said date which will be considered before any such order is made under section **271(1)(c)** of the Income Tax Act, 1961.

ASHUTOSH SINGH
DCIT 1(1), BILASPUR

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

Note: If digitally signed, the date of digital signature may be taken as date of document.
AAYAKAR BHAWAN, VYAPAR VIHAR, BILASPUR, BILASPUR, Chhattisgarh, 495001
Email: BILASPUR.DCIT1.1@INCOMETAX.GOV.IN,

This document is digitally signed
Signer: Ashutosh Singh
Date: Monday, January 07, 2019 11:36 AM
Location: BHOPAL, India

We find substance in the claim of the Ld. AR that as the assessee pursuant to the SCN, dated 07.01.2019 was left guessing as to for what default/defaults the penalty u/s.271(1)(c) of the Act was sought

to be imposed on it, therefore, it was divested of its right of putting forth an explanation in its defense to support its claim that it was not exigible to imposition of penalty under the aforesaid statutory provision. Our aforesaid conviction is all the more fortified by the fact that it was only subsequent to the SCN, dated 07.01.2019 that the assessee had filed its reply/explanation dated 24.01.2019 in its attempt to impress upon the A.O that no penalty u/s.271(1)(c) of the Act was called for in its case. Considering the SCN, dated 07.01.2019, we are of a strong conviction that the A.O had failed to validly put the assessee company to notice about the specific default for which penalty u/s.271(1)(c) was sought to be imposed in its case. Insofar the validity of the jurisdiction assumed by the A.O for imposing penalty u/s 271(1)(c) is concerned, we find that as stated by the Ld. AR, and, rightly so, as the A.O had in his SCN, dated 07.01.2019 failed to point out the specific default for which penalty u/s.271(1)(c) was sought to be imposed upon the assessee company, therefore, the assessee was not validly put to notice as regards the default for which it was called upon to explain that as to why penalty may not be imposed on it under Sec. 271(1)(c) of the I.T Act.

122. As observed by us hereinabove, a perusal of the 'Show cause' notice issued in the present case by the A.O under Sec. 274 r.w. Sec. 271(1)(c), dated 07.01.2019 clearly reveals that there was no application of mind by the A.O while issuing the same. We are of a strong conviction that the very purpose of affording a reasonable opportunity of being heard to the assessee as per the mandate of Sec. 274(1) of the Act would not only be frustrated, but in fact would be rendered as redundant if an assessee is not conveyed in clear terms the specific default for which penalty under the said statutory provision is sought to be imposed on it. In our considered view, the indispensable requirement on the part of the A.O to put the assessee to notice as regards the specific charge contemplated under the aforesaid statutory provision, viz. 'concealment of income' or 'furnishing of inaccurate particulars of income' is not merely an idle formality but is a statutory obligation cast upon him, which we find had not been discharged in the present case as per the mandate of law.

123. As we have while disposing off the appeal of the assessee for A.Y.2009-10 in ITA No.156/RPR/2014 dealt with at length on the validity of the jurisdiction assumed by the A.O for imposing penalty

u/s.271(1)(c) of the Act on an assessee without pointing out in the "Show cause" notice (SCN) issued u/s.274 r.w.s. 271(1)(c) of the Act the specific default for which penalty was sought to be imposed in its case, therefore, the view therein taken by us will apply *mutatis mutandis* for disposing off the present appeal of the assessee for A.Y.2016-17 in ITA No.42/RPR/2023. As observed by us hereinabove, though the A.O vide his SCN, dated 02.02.2018 had validly put the assessee company to notice that the penalty proceedings u/s.271(1)(c) were being proceeded with in its case for "furnishing of inaccurate particulars of income" but then the said clarity of notice was lost the moment he had thereafter vide his subsequent SCN dated 07.01.2019 issued u/s. 274 r.w.s. 271 called upon the assessee to explain that as to why penalty u/s.271(1)(c) may not be imposed upon it for having concealed the particulars of income and furnished inaccurate particulars of income. Therefore, in the backdrop of our aforesaid observations, as the A.O in the present case also had imposed penalty u/s.271(1)(c) without pointing out in the SCN dated 07.01.2019 the specific default for which the penalty was sought to be imposed, therefore, the penalty of Rs.77895.61 lacs (approx.) is on the same terms and reasoning vacated.

124. Resultantly, the appeal filed by the assessee in ITA No.42/RPR/2013 for A.Y.2016-17 is allowed in terms of our aforesaid observations.

125. In the combined result, appeals filed by assessee are allowed while for, appeals filed by the revenue are dismissed in terms of our aforesaid observations.

Order pronounced in open court on 09th June, 2023.

Sd/-	Sd/-
ARUN KHODPIA	**RAVISH SOOD**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; **दिनांक** / Dated : 09th June, 2023
SB

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

1. **अपीलार्थी** / The Appellant.
2. **प्रत्यर्थी** / The Respondent.
3. The CIT(Appeals), Bilaspur (C.G)
4. The CIT, Bilaspur (C.G)
5. **विभागीय प्रतिनिधि**, **आयकर अपीलीय अधिकरण**,**रायपुर बेंच**, **रायपुर** / DR, ITAT, Raipur Bench, Raipur.
6. **गार्ड फ़ाइल** / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, **रायपुर** / ITAT, Raipur.