

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI YOGESH KUMAR US, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.6942/Del/2019, A.Y. 2016-17

Deputy Commissioner of Income Tax, Central Circle-1, Noida (UP)	Vs.	Sanjay Singh, B-28, Gamma-I, Greater Noida, Gautam Budh Nagar (UP) PAN: ADSPN2029H
(Appellant)		(Respondent)

ITA No.2276/Del/2023, A.Y. 2016-17

Deputy Commissioner of Income Tax, Central Circle-1, Noida (UP)	Vs.	Sanjay Singh, B-28, Gamma-I, Greater Noida, Gautam Budh Nagar (UP) PAN: ADSPN2029H
(Appellant)		(Respondent)

C.O.No.84/Del/2024, A.Y. 2016-17

(Arising out of ITA No. 2276/Del./2023)

Sanjay Singh, B-28, Gamma-I, Greater Noida, Gautam Budh Nagar (UP) PAN: ADSPN2029H	Vs.	Deputy Commissioner of Income Tax, Central Circle-1, Noida (UP)
(Appellant)		(Respondent)

Revenue by	Ms. Jaya Chaudhary, CIT(DR)
Assessee by	Sh.Shivansh Bansal, CA Ms. Pallavi Gupta, CA

Date of Hearing	20/11/2024
Date of Pronouncement	28/11/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

Two appeals; Quantum appeal and penalty appeal, for the Assessment Year (hereinafter, the 'AY') 2016-17 filed by the Revenue are directed against orders dated 16.05.2019 and 30.05.2023, passed by the Commissioner of Income Tax (Appeals)-IV, Kanpur [hereinafter, the 'CIT(A)']. The assessee filed Cross Objection (No. 84/Del/2024 arising out of ITA No. 2276/Del/2023); i.e. the penalty appeal filed by the Revenue. Since the facts of these appeals and C.O. are common and interrelated; therefore, we heard these appeals and C.O. together and the same are being disposed off by this common order.

2. Revenue has raised following grounds in quantum appeal (ITA No.6942/Del/2019): -

“1. On facts and circumstances of the case and in law, the Ld CIT (A) erred in law while concluding that the addition of Rs. 2 crores made by AO in respect of unexplained cash found during search over and above the income of 9 crore surrendered by the assessee u/s 132(4) based on page 3, 4 & 6 of LP-1 would tantamount to double addition. No evidence/details were given by assessee so prove that the sum of Rs.2 Cr received back on cancellation of alleged deal was from the very same person to whom the cash advances of 9 Cr was given at earlier occasion.

2. On facts and circumstances of the case and law, the Ld CIT (A) failed to appreciate that the contention of the assessee that transactions recorded on the page No. 3,4 & 6 of LP-1 of the seized documents were unexplained cash advances of 9 Cr given for

purchase of land on three different dates out of which only 2 Cr being received back due to non-execution of the deal was only a make believe argument devoid of logic because if the deal was cancelled, he should have received back the entire amount of 9 Cr and not merely 2 Cr. Moreover, the assessee failed to support its claim by giving the details of persons to whom the advances were given the MOUs evidencing payment of advances reason for cancellation of receipt of only part amount, date of receiving back and the name and address of the person(s) from whom such amount was received.

3. *On the facts and circumstances of the case and in law, the CIT (A) failed to appreciate that the onus of proving that Rs. 2 Cr. was out of the same money which was advanced earlier from unexplained sources lay heavily on the assessee in view of the fact that the cash of Rs. 2 Cr. represented unexplained money which was not recorded in books and also due to fact that the transaction of acceptance of cash and repayment in connection in with transfer of immovable property (whether finally transferred or not) is in violation of provisions of section 269SS as amended by Finance Act 2015 and hence applicable for AY 2016-17 also.*

4. *On facts and circumstances of the case and in law, the Ld. CIT (A) failed to appreciate that the mere statement u/s 132(4) that the cash found during search was out of cash received from earlier advances given was only a bald statement without any evidence/detail to support the same and hence the burden u/s 69A could not have been said to have been discharged.*

5. *On facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that unless the assessee has been able to establish the link between the unaccounted money paid and unaccounted money received, the benefit of automatic telescoping is impermissible as also held in cases of Anantharam Veerasinghaiah & Co. 1323 ITR 457 (SC), Bhaiyalal Shyambihari 276 ITR 38(Alld) Vijay Agri Industries 294 ITR 610(Alld), Madathi Jamuddin 44 Taxmann.com 241(Ker) JRD Stockbrokers Pvt. Ltd 409 ITR 306(Del). DK Garg 250 Taxman 104 (Del). MH Raney 34 Taxmann.com 5(Mumbai) etc.*

6. *On facts and circumstances of the case and in law, the Ld. CIT (A) failed to allude to the relevant facts and provisions of law to arrive at the correct conclusion.*

7. *The order of the Ld. CIT (A) is erroneous in law and on facts of the case and is liable to be set aside and the order of the AO be restored.*

8. *That the appellant craves leave to add or amend any other more ground of appeal as state above as and when needs for doing so may arise.”*

2.1 In nutshell, the Revenue, in Quantum appeal vide argumentative grounds, has challenged the deletion of Rs. 2.00 Crores by the Ld. CIT(A). The appeal of the Revenue revolves around the reasoning that Rs. 2.00 Crores was not part of the surrendered income of Rs. 9.00 Crores.

2.2 In Penalty appeal, the Revenue has challenged the finding of the Ld. the CIT(A); i.e. upholding of penalty @ 10% as against 30% levied by the Assessing Officer ((hereinafter, 'AO'). In C.O., the assessee has questioned the basis of upholding of penalty @ 10%.

ITA No.6942/Del/2019:

3. The assessee was searched under section 132 of the Income Tax Act, 1961 (hereinafter, the 'Act') on 30.09.2015 along with AIRWIL Group of cases, a Real Estate Developer of Noida, Uttar Pradesh. Various incriminating documents were seized from the premises of the assessee. The assessment of AY 2016-17 was completed under section 143(3) of the Act at income of Rs.11,88,88,240/- as against the returned income of Rs.9,88,88,240/-. During the course of search proceedings, the statement

of the assessee was recorded under section 132(4) of the Act, wherein he had surrendered the income of Rs.9.00 Crores for the relevant year i.e. F.Y. 2015-16 in which the search had taken place. The one and only addition of Rs.2.00 Crores was made in the returned income on the reasoning that the sum of Rs.2.00 Crores was not part of the surrendered income of Rs.9.00 Crores. The relevant part of the assessment order is reproduced hereunder:-

“5.4 The claim of the assessee is not tenable and cannot be accepted as the same seems to be afterthought as the entries mentioned at Page No. 3, 4 & 6 of LP-1, on the basis of which surrender was made, nowhere mentioned regarding the cash of Rs.2,00,00,000/- was available with the assessee, which was found during search operation. Therefore, the amount of Rs 2,00,00,000/- deserves to be added to the total income of the assessee for the year as undisclosed money in the hands of the assessee under section 69A of Income The Act, 1961. Penalty u/s 271AAB of the Act is initiated on account of undisclosed income detected during the search operation.

[Unexplained Cash Rs. 2,00,00,000/-]”

In appeal, the Ld. CIT(A) knocked off the said addition of Rs.2.00 crores. Aggrieved, the Revenue filed appeal before the Tribunal.

4. The Ld. CIT-DR, placing emphasis on the statement recorded under section 132(4) of the Act, submitted that Rs.2.00 Crores were not part of the surrendered income of Rs.9.00 Crores. The Ld. CIT-DR drew our attention to some parts of statement recorded under section 132(4) of the Act to submit that Rs.2.00 Crores was not part of the surrendered income of Rs.9.00 Crores.

5. On the other hand, the Ld. Authorized Representative (hereinafter, the 'AR') submitted that the assessee was involved in the business of sale of plot as a real estate developer. He used to advance sum not only through banking channel but also through cash during the process of acquisition of plots as stock in trade. The advances given by him to various persons, in case the deal did not finalize, got refunded subsequently. He submitted that the advance of Rs.2.00 Crores given by the assessee for a plot did not materialize finally, so he got the said amount refunded back. Since this was undisclosed income; therefore, the same was surrendered as income in the statement recorded under section 132(4) of the Act. Hence, separate addition on this score was not called for. The Ld. AR placed emphasis on the following parts of the statement recorded under section 132(4) of the Act, which read asunder:-

“उपरोक्त प्राप्त नकद धन राशी में से रुपये एक करोड़ नौ लाख उन्नासी हजार तिन सौ उन्नीस मात्र मेरा Business entity (कम्पनी) को Booked of A/c में दर्ज है (cash in hand) तथा इसके साक्ष्य के रूप में, मैं cash Books as on date तथा कम्पनी रिजोल्यूशन प्रस्तुत कर रहा हूँ। शेष धन राशि रुपये दो करोड़ मात्र मेरी कम्पनी को Books of A/c में एवं मेरी Books of A/c में दर्ज नहीं है अतः मैं यह धन राशि रुपये दो करोड़ मात्र वित्त वर्ष 2015-16 में अपने निजी हाथों में अघोषित आय के रूप में सरेंडर करता हूँ। मैं इस पर नियम अनुसार आयकर अदा करूँगा। यह सरेंडर, मैंने स्वेच्छा से अपनी मानसिक शांति के लिए किया है। मेरा निवेदन है कि इसके कारण कोई दण्डात्मक कार्यवाही मेरे विरुद्ध नहीं की जाएगी।

*जैसा कि आपको निवेदन है कि मेरा Real Estate का काम है एवं
जमीन खरीद हेतु बयाना दिया जो कि मेरे निवास से प्राप्त डायरी (स्पाइरल) जो कि*

आपके LP-1 में सीज्ड है मैं भी दर्ज है। किसी कारण यह सौदा पूर्ण न हो पाने के कारण ; मुझे मेरा दिया हुआ बयाना ; रुपये दो करोड़ मात्र कि रकम मुझे वापस 28/09/2015 को प्राप्त हुई यह वापसी को हुई प्राप्त रकम दो करोड़ रुपये ही आपको मेरे घर से आज कार्यवाही के दौरान प्राप्त हुआ है।

उपरोक्त पेजों पर मेरे द्वारा किये जाने वाले जमीन को खरीद – फरोख्त का विवरण दर्ज है। एवं यह वित्त – वर्ष 2015- 2016 से सम्बन्धित लेन-देन है। जैसा कि मैंने पिछले उत्तर में बताया है कि मैं Real Estate का काम करता हूँ अतः इसी सम्बंध में मैंने वित्त वर्ष 2015-2016 में कुछ जमीन सौदों के बयाने के तौर पर कुल रूपया नौ करोड़ मात्र नकद में दिया था जिसकी तारीख वारी विवरण इन पेजों पर लिखी है। मैं यहाँ स्पष्ट करना चाहूँगा कि जैसा प्रश्न संख्या 7 में मैंने बताया है कि इन रुपये नौ करोड़ में से ही रुपये दो करोड़ वापस मिला था जो आज कार्यवाही के दौरान सीज हुआ है।

जी नहीं यह धन राशि मेरी Books of A/c में दर्ज नहीं है। अतः मैं अपनी स्वेच्छा से अपनी मानसिक शांति के लिए कुल रुपये नौ करोड़ मात्र वित्त - वर्ष 2015-16 में अघोषित आय के रूप में सरेंडर करता हूँ। मैं यहाँ यह स्पष्ट करना चाहूँगा कि प्रश्न संख्या 5 में, मेरे द्वारा सरेंडर किया हुआ रूपया दो करोड़ इस कुल रुपये नौ करोड़ में शामिल है। जैसा कि डायरी की Entry से भी स्पष्ट है। इस प्रकार मैं वित्त – वर्ष 2015-2016 में अपने हाथ में कुल रुपये नौ करोड़ मात्र अघोषित आय के रूप में सरेंडर करता हूँ तथा निवेदन करता हूँ कि मेरे विरुध कोई भी दण्डात्मक कार्यवाही नहीं कि जाएगी। मैं पुनः स्पष्ट कर रहा हूँ कि उपरोक्त अघोषित आय वित्त – वर्ष 2015-2016 में मेरी नियमित आय के अतिरिक्त एवं उपर से होगी।”

5.1 The Ld. AR also placed emphasis on the para 5.4 of the impugned order, which reads as under: -

“5.4 From the above stated discussion it is evident that the incriminating documents at page 3, 4 & 6 of LP-1 was found during

the course of search action u/s 132 of Act. Shri Sanjay Singh, Director M/s. Oasis Buildmart (India) Pvt Ltd. was specifically confronted with these seized incriminating documents, who surrendered Rs 9,00,00,000/- on the basis of incriminating documents found and seized at LP-1 for this relevant assessment year. Further, Shri Sanjay Singh has not retracted his statement and honoured the surrender of income of Rs. 9,00,00,000/- on the basis of incriminating documents LP-1. Further, in a specific answer to question no 7. of the sworn statement appellant has specifically mentioned that Rs 2,00,00,000/- seized, during the search operation was out of advance received back on 28.09 2015 against the advance given on 07.04.2015, which is recorded on Page No. 3 of LP-1 against purchase of land. The appellant has specifically mentioned that he is into the business of purchase and sale of land and as part of such business transaction only, appellant has entered into the transaction of Rs. 9,00,00,000/-, which were recorded on Page No. 3, 4 and 6 of LP-1 and out of such sum only, Rs. 2,00,00,000/- was received back by appellant, which was found during search. The fact that appellant has specifically mentioned that sum of Rs. 2,00,00,000/- is part of Rs 9,00,00,000/- and was part of advance received back is clearly mentioned in statement u/s 132(4) of Income Tax Act, 1961 itself in response to Ques No 7 Ques No. 9 and Ques No 10. The mention of the AO that the appellant has separately offered a sum of Rs 2,00,00,000/- to tax is completely wrong and far away from the facts of the case and statement of the appellant recorded during search proceedings. The appellant in response to Ques No. 7, Ques No. 9 and Ques No. 10 has again and again stated that such sum of Rs. 2,00,00,000/- was part of Rs. 9,00,00,000/- surrendered by him. It is also to be mentioned that the Ld. AO has not brought on record anything contrary in support of his claim that such sum of Rs. 2,00,00,000/- is not part of Rs 9,00,00,000/- surrendered by appellant or such sum was not part of advance received back by the assessee on 28.09.2015 against the advance given on 07.04.2015 as recorded on page no. 3 of LP-1. Thus, it is concluded that the cash seizure of Rs 2,00,00,000/- includes the total surrender of Rs 9,00,00,000/- made by the appellant, during this relevant assessment year. Therefore, further addition made by the AO of Rs. 2,00,00,000/- would tantamount to double addition of the same amount, which is impermissible in law.”

5.2 The Ld. AR further submitted that the statement recorded under section 132(4) of the Act had to be believed true and complete until proved otherwise with the help of corroboratory evidence. The statement under section 132(4) of the Act had been recorded during the course of search operations when the assessee was under stress and wanted to come out of the clean. He further submitted that the Ld. CIT-DR had not brought any material on the record to contradict the findings of the CIT(A). Hence, the order of the Ld. CIT(A) required to be upheld.

6. We have heard both the parties and perused the material available on record. We find force in the argument of the Ld. AR on the simple reasoning that the assessee had categorically admitted in the statement recorded under section 132(4) of the Act that the advance of Rs.2.00 Crores given for a plot got refunded back after non-materialization of the said deal. The assessee has categorically admitted in the statement recorded under section 132(4) of the Act that the advance of Rs.2.00 Crores is part of the surrendered income of Rs.9.00 Crores in the relevant year. The probability of stating truth in the statement recorded under section 132(4) of the Act is always more for usual reasons. Prima-facie, the statement recorded under section 132(4) of the act has to be considered true and complete unless proved otherwise. Since the Revenue has not brought any material on the record to contradict the finding of the Ld. CIT(A) and the inference emerged from the statement recorded under section 132(4) of the Act; therefore, we are of the considered view that

there is no need to interfere with the findings of the Ld. CIT(A). Consequentially, the Quantum appeal filed by the Revenue stands dismissed. Various grounds raised in the Quantum appeal are thus, consequentially disposed off as the same do not specific adjudication. Accordingly, the appeal filed by the Revenue is dismissed.

ITA No.2276/Del/2023 and C.O. No.84/Del/2024:

7. The assessee has surrendered the income of Rs.9.00 Crores during the course of search proceedings as evident from the above. The AO levied penalty @ 30% on such income under section 271AAB(1)(a) of the Act on the reasoning that the assessee did not fulfill the terms and conditions laid down under section 271AAB(1)(a) of the Act and the assessee has also not divulged the source and manner of earning such income. On the other hand, the Ld. CIT(A) has held otherwise and has given a categorical finding that the assessee has fulfilled the terms and conditions laid down under section 271AAB(1)(a) of the Act and thus, the penalty was leviable @ 10% instead of 30%. Aggrieved, the Revenue filed appeal challenging the finding of the Ld. CIT(A). Against the said penalty appeal, the assessee filed CO challenging the validity of the penalty on technical reasons. The Ld. AR submitted that the AO has issued the notice dated 30.12.2017 under section 274 r.w.s. 271 of the Act. In the said penalty notice, the AO has not strike off the non-applicable defaults. A copy of the said penalty notice dated 30.12.2017 wherein the AO has mentioned that *“why penalty under section 271AAB of the Act may not be imposed upon you.”* Further, the Ld.

AR submitted that the AO has not specified the charge liable for penalty under section 271AAB(1) of the Act. Therefore, the penalty levied under section 271AB(1)(a) of the act was not leviable at all. In support of the argument, the Ld. AR placed reliance on the decision of the co-ordinate Bench in the case of Jaina Marketing & Associates, 162 taxman.com 439 wherein it was held that the penalty notice should specify and convey the charge against the assessee for which penalty has been proposed to be levied. He drew our attention to the relevant portion of the said decision as under:

"21. As could be seen from the above the notice issued u/s 271AAB of the Act, it does not depict the charge against the Jaina Marketing & Associates, Delhi assessee as to under which Clause (a), (b) or (c) or Section 271AAB (1) or Clause (a) or (b) of 271 AAB (1A) of the Act penalty is leviable on the assessee. Therefore, we Oare of the opinion that the notice initiating penalty u/s 271AAB of the Act is vague and the assessee was not made aware of the actual charge on which the penalty proceedings will be initiated on the assessee. The various judicial precedents have held that the penalty notice should be clear enough to convey the assessee about the charge which is to be levied against him/her/it for levying penalty for the contravention of the related provisions of the Act.

22. An Identical question came for consideration before the Jaipur bench of the Tribunal in the case of Sri. Mahaveer Prasad Agarwal Vs.The DCIT in ITA No.1218/JP/2019 vide order dated 02-06-2022, wherein the similar notice has been issued to the Assessee therein and the Tribunal held as under:

*"5.1 In case of Shri Padam Chand Pungliya vs. ACIT (supra), the Coordinate Bench has held at para 5 page 7 of its order as under:-
"It is pertinent to note that the disclosure of additional income in the statement recorded under section 132(4) Itself is not sufficient to levy the penalty under section 271AAB of the Act until and unless the income so disclosed by the assessee falls in the definition of*

undisclosed income defined in the explanation to section 271AAB(1) of the Act. Therefore, the question whether the income disclosed by the assessee is undisclosed income in terms of the definition under section 271AAB of the Act has to be considered and decided in the penalty. Since the assessee has offered the said income in the return of income filed under section 139(1) of the Act, therefore, the question of taking any decision by the AO in the assessment proceedings about the true nature of surrender made by the assessee does not arise and only when the AO has proposed to levy the penalty then it is a pre-condition for invoking the provisions of section 271AAB that the said income disclosed by the assessee in the statement under section 132(4) is an undisclosed income as per the definition provided under section 271AAB. Therefore, the AO in the proceedings under section 271AAB has to examine all the facts of the case as well as the basis of the surrender and then arrive to the conclusion that income disclosed by the assessee falls in the definition of undisclosed income as stipulated in the explanation to the said section. Therefore, we do not agree with the contention of the Id. D/R that the levy of penalty under section 271AAB is mandatory simply because the AO has to first issue a show cause notice to the assessee and then has to make a decision for levy of penalty after considering the fact that all the conditions provided under section 271AAB are satisfied."

It is evident from the show cause notice issued under section 274 read with section 271AAB (APB Page 1) that the AO was not clear as to on what precise charge the appellant was asked to show cause, whether the assessee shall pay by way of penalty under clause (a), (b) or (c) of section 271AAB. The AO has just mentioned "deliberately concealed the true income". Thus, the AO without mentioning specific default of the assessee in terms of clause (a), (b) or (c) of section 271AAB of the Act, the show cause notice issued in routine manner cannot be considered a valid notice in the eyes of law and accordingly the levy of penalty against the assessee is held to be void ab initio. Further, the assessee has substantiated the undisclosed cash available, as to the extent of surrendered income of Rs. 8,73,000/-.

6. In view of the above, considering the peculiar facts, the grievance of the assessee is accepted as genuine and as such the order of the Id. CIT (A) sustaining the penalty is hereby quashed.

7. *In the result, appeal of the assessee is allowed.*"

22. *The Indore Bench of the Tribunal in ITA No. 869/1nd/2018 in the case of Shri Ashok Bhatia vs. DCIT vide order dated 05.02.2020 held as under:-*

"8. From perusal of the above provision we observe that sub section 3 of Section 271AAB of the Act talks about issuing the notice u/s 274 of the Act. So for initiating the penalty proceedings u/s 271AAB of the Act the first step to be taken by Id. A.O is to issue a valid notice u/s 274 of the Act. Sub- section (1) to Section 274 of the Act provides a procedure that "No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard". To comply with this requirement the notice u/s 274 should be clear enough to convey the assessee about the charge which is to be leveled against him/her/it for levying the penalty for the contravention of the related provisions of the Act which in the instant case relates to not surrendering of undisclosed amount during the course of search which is subsequently admitted during the course of assessment and not challenged before the Ld. CIT(A). So it was incumbent for Ld. A.O that in the notice issued u/s 274 of the Act he should have mentioned that penalty u/s 271AAB of the Act may be levied on 10/20/30% since the assessee falls in Clauses (a)/(b)/(c) of section 271AAB of the Act. He should have further mentioned that as the assessee's case falls under clause-c of section 271AAB of the Act, why she should not be visited by penalty (30% of the undisclosed income. Against this charge the assessee should have been given a reasonable opportunity of being heard. From going through the above three notices issued to the assessee on 22.03.2016, 03.06.2016 and 16.09.2016, we find that there is no mention about various conditions provided u/s 271 AAB of the Act. The Ld. A.O has very casually used the proforma used for issuing notice before levying penalty u/s 271(1)(c) of the Act for the concealment of income or furnishing of inaccurate particulars of income. Except mentioning the Section 271AAB of the Act in the notice it does not talk anything about the provision of section 271AAB. Certainly, such notice has a fatal error and technically is not a correct notice in the eyes of law because it intends to penalize an assessee without spelling about the charge against the assessee. Hon'ble Jurisdictional High Court in the case of PCIT V/s Kulwant Singh Bhatia (supra) dealt the issue of defective notice issued u/s 274 r.w.s.

271(1)(c) of the Act and Hon'ble court after relying judgment of Hon'ble Supreme Court in the case of CIT V/s Manjunatha Cotton Ginning Factory and CIT v/s SSA'S Emerald Meadows (supra) held that such show cause notices would not satisfy the requirement of law as notice was not specific.

Merely issuing notice in general proforma will negate the very purpose of natural justice. Hon'ble Apex Court in the case of Dilip N Shrof 161 Taxmann 218 held that "the quasi-criminal proceedings u/s 271(1)(c) of the Act ought to comply with the principles of natural justice".

15. We, therefore respectfully following the judgment of jurisdictional High Court in the case of PCIT V/s Kulwant Singh Bhatia (supra), decision of Coordinate Bench of Chennai in the case of DCIT V/s R. Elangovan (supra) and Jaipur Bench in the case of Ravi Mathur Vs DCIT (supra) and in the given facts and circumstances of the case wherein the matter written in the body of the notice issued u/s 274 of the Act does not refer to the charges of provision of Section 271AAB of the Act makes the alleged notice defective and invalid and thus deserves to be quashed. Since the penalty proceedings itself has been quashed the impugned penalty of Rs.64,22,348/- stands deleted. Thus, assessee succeeds on legal ground challenging the validity of notice issued u/s 274 r.w.s. 271AAB of the Act."

23. The Kolkata Bench of the ITAT in the case of Sushil Kumar Paul vs. ACIT in ITA No. 2274/Ko1/2019 vide order dated 15.12.2022, held as under:-

"From the perusal of the above proposition, we observe that sub section 3 of section 271AAB of the Act talks about issuing the notice u/s 274 of the Act. So for initiating the penalty proceedings u/s 271 AAB of the Act, the first step to be taken by Id. Assessing Officer issue a valid notice u/s 274 of the Act provides a procedure that "No order imposing a penalty under this Chapter shall be made unless the assessee has been heard. or has been given a reasonable opportunity of being heard." To comply with this requirement the notice u/s 274 should be clear enough to convey the assessee about charge which is to be leveled against him/her it for levying penalty for contravention of the related provisions of the Act. So it was incumbent for Id. AO that in the notice issued u/s 274 of the Act should have

mentioned that penalty u/s 271AAB of the Act may be levied @ 10/20/30% since the assessee falls in Clauses (a)/(b)/(c) of section 271AAB of the Act. He should have further mentioned that as the assessee's case falls under Clause-c of section 271AAB of the Act, why he should not be visited by the penalty (i.e. 30% of the undisclosed income. Against this charge. the assessee should have been given reasonable opportunity of being heard.

10. From going through the above notice issued to the assessee on 28.12.2017. we find that there is no mention about various conditions provided u/s 271AAB of the Act. The Id. AO has very casually used the proforma used for issuing notice before levying penalty u/s 271(1)(c) of the Act for the concealment of income or furnishing of inaccurate particulars of income. Except mentioning the section 271AAB of the Act in the notice, it does not talk anything about the provisions of section 271AAB. Therefore, certainly such notice has a fatal error and technically' is not a correct notice in the eyes of law because it intends to penalize an assessee without spelling about the charge against the assessee".

24. The similar views have been taken in the following orders of the Tribunal:-

i) Hyderabad Bench of the Tribunal in ITA No. 756/Hyd/20 ACIT dated 04.01.2022 vs Smt. Pallem Reddy Sreelakshmi, Tirupati.

ii) Indore Bench of the Tribunal in ITA No. 249/Ind/2021 dated 28.06.2022 ACIT vs. Shri. Arnit Tiwari

iii) Jabalpur Bench of the Tribunal in ITA No. 1218/JP/2019 dated 02.08.2022 Shri Mahaveer Prasad Agarwal vs. DCIT.

25. For the detailed reasoning and discussion made above and considering the fact that no specific charge has been mentioned in the penalty notice issued u/s 271AAB of the Act and also following the principles laid down in the above judicial pronouncements, we delete the penalty imposed by the A.O. On this technical ground for the Assessment Years 2018-19 & 2019-20.

26. Since, penalty is cancelled on technical ground, the adjudication of levy of penalty on merits becomes academic in nature. Hence, no

opinion is rendered thereon and they are left open. Accordingly, Appeals filed by the assessee are allowed.”

8. In view of the fact that no specific charge has been mentioned in the penalty notice issued u/s 271AAB of the Act, following the reasoning of the decision in the case of Jaina Marketing & Associates(supra) and also following principles laid down in the judicial pronouncements mentioned in the case of Jaina Marketing & Associates (supra), we delete the penalty imposed by the AO on the technical ground.

9. Since the penalty has been cancelled on technical ground; therefore, adjudication of other grounds/merit of the case, being academic in nature, are left open. Accordingly, the appeal filed by the Revenue is dismissed and the C.O. of the assessee is allowed.

10. In the result, both appeals filed by the Revenue are dismissed and C.O. of the assessee is allowed.

Order pronounced in open Court on 28th November, 2024.

Sd/-

**(YOGESH KUMAR US)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated:28/11/2024

Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

5. CIT-DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI