

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER

ITA No.720/Ind/2024
Assessment Year: 2014-15

Prakash Asphaltting & Toll Highways (India) Limited, 76, Mall Road, Mhow (Assessee/Appellant)	<u>बनाम/</u> Vs.	ACIT Central Circle -1 Indore (Revenue/Respondent)
PAN: AABCP0398N		
Assessee by	Shri Anup Garg & Vikas Guru, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	22.01.2025	
Date of Pronouncement	24.02.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first appeal dated 30.08.2024 passed by learned Commissioner of Income-tax-3, Bhopal ["CIT(A)"] which in turn arises out of penalty-order dated 21.03.2022 passed by learned ACIT, Central Circle, Indore ["AO"] u/s 271AAB(1) of Income-tax Act, 1961 ["the Act"] for assessment-year ["AY"] 2014-15, the assessee has filed this appeal.

2. The background facts leading to present appeal are such that the assessee is a company engaged in the business of developing, operation and

maintenance of infrastructure projects of roads and bridges, toll collection contracts, etc. A search u/s 132 was carried on one "PATH Group" including assessee on 27.08.2014. Pursuant to search action, the assessments of AYs 2009-10 to 2015-16 were framed u/s 153A/143(3). Presently, we are concerned with AY 2014-15 for which the assessee filed return declaring a total income of Rs. 14,45,690/- on 30.03.2016 in response to notice u/s 153A but the AO completed assessment at a total income of Rs. 17,21,79,560/- after making certain additions vide assessment-order dated 30.12.2016. Simultaneously, the AO initiated penalty proceeding u/s 271AAB vide notice dated 30.12.2016 u/s 274 r.w.s. 271AAB which culminated into passing of penalty-order dated 21.03.2022 imposing a penalty of Rs. 1,63,64,882/- u/s 271AAB(1)(b) @ 60% on undisclosed income of Rs. 2,72,74,804/-. The *five issues* for which this penalty was imposed, have been neatly noted by CIT(A) in Para 2.1 to 2.5 of impugned order, we re-produce the same:

"2.1 The return of income for the AY 2014-15 was filed on 28/11/2014 u/s 139(1) of the Act declaring total income of Rs. 14,35,62,680/-. In response to the notice u/s 153A of the Act, the assessee had filed return of income on 30/03/2016 for the AY 2014-15, declaring total income at Rs. 14,45,690/- The appellant had revised the deduction u/s 80-IA of the Act to Rs. 17,91,52,742/- in computation of income u/s 153A of the Act. The appellant was confronted with the facts in respect of deduction claimed u/s 80-IA on account of income from other sources, which was not available for the deduction under section 80-IA of the Act. Considering the factual matrix of the issue, the appellant had withdrawn the incorrect claim of deduction u/s 80-IA to the extent of Rs. 2,21,48,480/- and revised deduction u/s 80-IA and furnished a fresh computation of income u/s 153A of the Act for AY 2014-15 wherein claim of deduction u/s 80-IA was reduced to Rs. 15,70,04,262/-. Accordingly, the learned AO had AO initiated penalty proceedings u/s 271AAB of the Act on account of undisclosed income of Rs. 2,21,48,480/-.

2.2 From the statement of Shri Ashok Shrotriya, director of PATH, the assessee company. During the AY 2014-15 total amount of payment was made as per

seized document page-30 to 31 of LPS-9 was Rs. 41,06,500/-. The statement of Shri Shrotriya was clear wherein he had stated that these payments were made by PATH only. The appellant had not made the correct admission of undisclosed income in its reply during the assessment proceedings. The Ld. AO had made addition of Rs. 41,06,500/- for the AY 2014-15 considering the fact that the appellant had not disclosed this unaccounted expenditure and the appellant concealed the particulars of income in response to return filed u/s 153A of the Act and Penalty proceedings u/s 271AAB of the Act was initiated on this issue.

2.3 During the search incriminating documents were seized in which some cash payment has been made which were not disclosed in books of account. In the submission of the assessee in response to the notice u/s 142(1) of the Act issued, the assessee admitted the undisclosed income of Rs. 5,75,000/-. Accordingly addition of Rs. 5,75,000/- was made to the total income for the AY 2014-15. And penalty proceedings u/s 271AAB for the AY 2014-15 was initiated by the Ld. AO on this issue.

2.4 From the seized document of page-41 to 50 of LPS-5, page-11 of LPS-4 and page-1 to 13 of LPS-25, certain transaction were made relating to Smt. Shivani Tawani. The appellant was show-caused on this issue. The appellant accepted the incorrect depreciation during assessment proceedings and addition of Rs. 2,32,050/- was made to the total income of the AY 2014-15, penalty proceedings u/s 271AAB of the Act was initiated on this issue.

2.5 On the basis of incriminating document, it was found that the PATH group has sold a Crusher at Village-Doll, Distt. Dhar. The Crusher was sold in AY 2011-12 but the depreciation on the same was claimed consistently by the appellant and onwards when the appellant was confronted with this fact, the appellant offered undisclosed income in the submission. Addition of Rs. 2,12,774/- was made to the total income of the assessee for the AY 2014-15 and penalty proceedings u/s 271AAB was initiated on this issue."

3. Aggrieved by penalty-order, the assessee carried matter in first-appeal but did not get any success. Now, the assessee has come in next appeal before us assailing the orders of lower-authorities.

4. The assessee has raised following grounds:

"1. The Ld. CIT(A) erred in confirming penalty u/s 271AAB of the I.T. Act is against the law and without appreciating the law and the facts of case. He is failed to appreciate that Penalty u/s 271AAB can be pressed into service only on existence of undisclosed income.

2. The Ld. CIT(A) failed to appreciate that penalty contemplated under section 271AAB of the Income Tax Act is not mandatory rather the imposition of penalty under the said section is upon the discretion of the AO and the AO exercised his discretionary powers in an arbitrary manner.

3. That Ld. CIT (Appeals) failed to appreciate that the Notice u/s 274 levying Penalty u/s 271AAB(1) is cryptic and without specifying the exact allegation or quantum the appellant case falls, therefore entire proceedings and the order passed in pursuance thereof is nullity. The penalty levied on the basis of defective notice is required to be quashed.

4. The Ld. CIT (Appeals) failed to consider or overlooked that the Penalty Order is passed in violation of time limit which begins from the date of initiation enshrined in Sec 275(1)(c) and grossly erred in considering the time limit for passing penalty order u/s 271AAB is governed by S. 275(1)(a) despite the fact that issue was not the subject matter of appeal.

5. The Ld. CIT (Appeals) erred in upholding the order of AO imposing penalty u/s 271AAB without appreciating that the revised claim u/s 80-IA is not amount to undisclosed Income and does not fall within the purview of undisclosed income as defined in penalty u/s 271AAB of the Act.

6. The learned CIT (Appeals) failed to appreciate that penalty is levied by ACIT in gross violation without properly appreciating the submissions and explanations made by the appellant before him and erred or failed to appreciate/consider the jurisdictional High court judgment/SC Judgment submitted are binding.

7. The Learned CIT (Appeals) failed to appreciate/consider that the penalty u/s 271AAB(1A)(b) at 60% is applicable to the search initiated after 15/12/2016 whereas the subject search is initiated on 27/8/2014, therefore the provision applicable is before amendment i.e. maximum to 30%.

8. That, the appellant further craves leave to add, alter and/or amend any of the foregoing grounds of appeal as and when considered necessary."

5. During hearing before us, Ld. AR for assessee/appellant has chosen to start with Ground No. 3 in which the assessee claims that the entire penalty proceeding undertaken and the order passed therein by the AO, is a nullity since the penalty-notice issued by AO did not specify the exact charge against assessee. Therefore, we first proceed to adjudicate this ground.

6. Apropos to this issue, Ld. AR for assessee firstly drew us to the provision of section 271AAB reading as under:

“271AAB. Penalty where search has been initiated

(1) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of July, 2012, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—

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- (a) *a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year, if such assessee—*
 - (i) *in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;*
 - (ii) *substantiates the manner in which the undisclosed income was derived; and*
 - (iii) *on or before the specified date—*
 - (A) *pays the tax, together with interest, if any, in respect of the undisclosed income; and*
 - (B) *furnishes the return of income for the specified previous year declaring such undisclosed income therein;*
 - (b) *a sum computed at the rate of twenty per cent of the undisclosed income of the specified previous year, if such assessee—*
 - (i) *in the course of the search, in a statement under sub-section (4) of section 132, does not admit the undisclosed income; and*
 - (ii) *on or before the specified date—*
 - (A) *declares such income in the return of income furnished for the specified previous year; and*
 - (B) *pays the tax, together with interest, if any, in respect of the undisclosed income;*
 - (c) *a sum computed at the rate of sixty per cent of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b).*
- (2) *No penalty under the provisions of section clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1).*
- (3) *The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.*

Explanation.—For the purposes of this section,—

(a) "specified date" means the due date of furnishing of return of income under sub-section (1) of section 139 or the date on which the period specified in the notice issued under section 153A for furnishing of return of income expires, as the case may be;

(b) "specified previous year" means the previous year—

(i) which has ended before the date of search, but the date of furnishing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the date of search; or

(ii) in which search was conducted;

(c) "undisclosed income" means—

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- (i) *any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has—*
- (A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or*
- (B) otherwise not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search; or*
- (ii) *any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.”*

7. Then, Ld. AR carried us to the show-notices dated 30.12.2016 & 04.01.2022 issued by AO u/s 274 read with section 271AAB, placed at Page 116 & 132 of Paper-Book, the same are scanned and re-produced here for immediate reference:

ANNEXURE
20/11/2016 I.T.N.S.-29
116
NOTICE UNDER SECTION 274 READ WITH SECTION 271AAB OF THE INCOME TAX ACT, 1961

To,
M/s Prakash Asphaltting & Toll Highways (PAN: - AABCP0398N)
(India) Ltd. 76, Mall Road Mhow,
Distt. Indore-452001

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 with you were required to furnish by a notice given under section 22(1)/22(2)/34 of the India Income Tax Act, 1922 or which you were required to furnish under section 139(1) or by a notice given under section 139(2)/148/153A of the Income Tax Act 1961, No. dated or have without reasonable cause failed to furnish it within the allowed and the manner required by the side section 139(1) or by such notice.

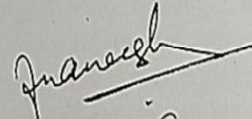
~~*have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the India Income Tax Act, 1922 or under section 142(1)/143(2) of the Income Tax Act 1961. No. dated~~

have disclosed /undisclosed income u/s 132(4) of the Act during specified previous year.

You are hereby requested to appear before me on 31/01/2017 at 03:30 PM and show cause why an order imposing a penalty on you should not be made under section 271AAB 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 side date which will be considered before any such order is made under section 271AAB.

Seal

Date: 30.12.2016



(Avaneesh Tiwari)

Dy. Commissioner of Income Tax (Central)-I
Indore

* Delete inappropriate words and paragraphs.





GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT
COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE 1 INDORE

ANNEXURE-.....G.....

To,
PRAKASH ASPHALTINGS & TOLL HIGHWAYS
(INDIA) LIMITED
76, MALL ROAD
MHOW 453441, Madhya Pradesh
India

PAN: AABCP0398N	Assessment Year: 2014-15	DIN & Notice No.: ITBA/PNL/S/271AAB(1)/2021- 22/1038416325(1)	Date : 04/01/2022
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Notice under section 274 read with section 271AAB(1) of the Income Tax Act, 1961

Sir/ Madam,

Whereas in the course of proceedings before me for the Assessment Year 2014-15, it appears to me that **a search was conducted in your case and you were found to have undisclosed income.**

You are hereby requested to appear before me either personally or through a duly authorised representative at **11:00 AM** on **13/01/2022** and show cause why an order imposing a penalty on you should not be made under section **271AAB(1)** 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 **271AAB(1)** of the Income Tax Act, 1961.

NARESH KUMAR AGARWAL
CENTRAL CIRCLE 1 INDORE

(In case the document is digitally signed please
refer Digital Signature at the bottom of the page)

8. Thereafter, Ld. AR submitted that the AO has, in the notice dated 31.12.2016 by which the penalty proceeding was initiated, mentioned “*you have disclosed/undisclosed income u/s 132(4) of the Act during specified previous year*”. Further, in the subsequent notice dated 04.01.2022 also, the AO has mentioned that “*a search was conducted in your case and you were found to have undisclosed income.*” Ld. AR submitted that the AO has made vague allegations against assessee and there is no specific charge made out by the AO as to under which clause (a), (b) or (c) of section 271AAB(1), penalty was leviable on assessee. Ld. AR submitted that the notice u/s 274 sets in motion the penalty-proceeding and it has to be a very clear notice. According to Ld. AR, by mentioning that the assessee “*you have disclosed/undisclosed income u/s 132(4) of the Act during specified previous year*” or “*a search was conducted in your case and you were found to have undisclosed income.*”, the AO is himself not sure about the default committed by the assessee. To show the height of AO’s unclear mind, Ld. AR also narrated that the first issue for which the AO has imposed penalty is the reduction in amount of deduction u/s 80-IA claimed by assessee, which even does not fall in the definition of “undisclosed income” prescribed in Explanation (c) to section 271AAB and yet the AO has taken this issue also in the sweep of section 271AAB. Ld. AR submitted that the Hon’ble Supreme Court, Hon’ble Jurisdictional High Court, ITAT Indore Bench and various other appellate forums have loudly held that if the show-cause notice u/s 274 does not spell out the specific charge of default committed by assessee,

the notice and subsequent proceeding founded thereon are invalid. In support of his contention, Ld. AR placed a heavy reliance on several decisions, the most important decisions are:

- (i) CIT Vs. SSA'S Emerald Meadows (2016) 73 taxmann.com 248 **(Hon'ble SC)** – in the matter of section 271(1)(c)
- (ii) Pr.CIT-I, Vs. Kulwant Singh Bhatia, ITA No. 9 to 14 of 208, Order dated 9th May 2018 **(Hon'ble jurisdictional High Court of MP)** – in the matter of section 271(1)(c)
- (iii) Shri Ashok Bhatia Vs. DCIT (2022) 43 ITJ 524 **(ITAT, Indore Bench)** – in the matter of section 271AAB
- (iv) Mukesh Kumar Ranka Vs. ACIT, ITA No. 97 & 98/Ind/2024 order dated 21.03.2024 **(ITAT, Indore Bench)** – in the matter of section 271AAB

9. Ld. AR submitted that the present case of assessee stands fully covered by above decisions, hence the penalty notice issued and consequently the penalty order passed by AO are invalid and deserve to be quashed.

10. Per contra, Ld. DR for revenue submitted that the lower-authorities have already rejected this very contention raised by assessee before them. Ld. DR relied upon the orders of lower-authorities reading as under:

AO's order:

"(iv) Regarding the contention that the notice u/s 271AAB dated 30/12/2016 and 16/05/2017 is cryptic and without specifying the allegation/quantum etc.. As per notice dated 30/12/2016 it was clearly mentioned that "have disclosed/undisclosed income u/s 132(4) of the Act during specified previous year". Hence the contention of the assessee there was not specifying the allegation is not correct. Further, as per the Act there is no need to mention any quantum in the penalty notice. The quantum was already discussed in assessment order in details. It is also a fact that notice dated 04/01/2022 was issued through ITBA and it was clearly mentioned that "a search was conducted in your case and you were found to have undisclosed income." In the assessment-order the AO has discussed the entire issue in details and initiated penalty proceedings u/s 271AAB of the Act. The assessee company quoted various decisions. The same was perused carefully. It is found that the facts of this case are different from the quoted case laws and thus find not applicable in this case.

(v) Regarding the contention of the assessee that the notice issued u/s 271AAB of the Act is silent about any default. In the notice dated 30/12/2016, it was clearly mentioned that "have disclosed/undisclosed income U/s 132(4) of the Act during specified previous year". Another notice was also issued through ITBA."

CIT(A)'s order:

"4.2.2 Ground No. 4, 5 & 8:

Through this grounds of appeal, the appellant has contested that penalty u/s 271AAB can be pressed into service only on existence of undisclosed income (within the meaning of Explanation below 271AAB) and if the notice does not make mention of such essential ingredient, the assessee is prevented from submitting its reply on the facts assumed by the assessing officer, the penalty order is perverse and untenable. In this context, I perused the first notice dated 30/12/2016 whereby penalty notice was issued to the appellant. In the notice dated 30/12/2016, it was clearly mentioned that "have disclosed/undisclosed income u/s 132(4) of the Act during specified previous year". The 'AO' has correctly appreciated the facts of the case and the provision of the Act.

Further, the appellant has challenged the notice issued u/s 274 levying penalty u/s 271AAB(1) as no specification of exact allegation or quantum mentioned therein. In this context, I perused the first notice dated 30/12/2016 whereby penalty notice was issued to the appellant. In the notice dated 30/12/2016, it was clearly mentioned that "have disclosed/undisclosed income u/s 132(4) of the Act during specified previous year." Furthermore, vide the assessment order the Ld. AO has discussed the entire issue in details and the appellant had considered all the facts. It is clear from the facts & circumstances of the case that the penalty notices always indicated the penalty provision along with the clear mention - undisclosed income u/s 132(4) of the Act in a specified year. Besides, notice issued by ITBA portal too mentioned "search was conducted in your case & you were found to have undisclosed income". This clearly discloses to the appellant the purpose of notice and if the appellant goes through his search assessment order, he can easily make out the issues with quantum and where such penalty has arisen. I find the ground very unreasonable as it has not caused any prejudice to the interest of the appellant.

Accordingly, based on above discussion, the above grounds of appeal as ground no. 4, 5 & 8 are dismissed."

11. We have considered rival submissions of both sides and carefully perused the case-record including the show-cause notices and order of penalty made by AO in the light of decisions cited by Ld. AR. On perusal of section 271AAB(1), we find that there are three different limbs of section 271AAB(1) covered in different clauses (a), (b) and (c) prescribing penalties for three different situations and conditions and those three limbs/clauses are mutually exclusive to each other. While Clause (a) deals a situation where the assessee admits/discloses income in the statements u/s 132(4) and simultaneously other prescribed conditions are also satisfied; Clause (b) deals a different situation where the assessee does not disclose/admit income in the statements u/s 132(4) but satisfies other prescribed

conditions; and Clause (c) deals a case not covered under (a) or (b). However, in the notice dated 30.12.2016 the AO has mentioned “you have disclosed/undisclosed income u/s 132(4) of the Act during specified previous year” and in subsequent notice dated 04.01.2022, the AO has mentioned “a search was conducted in your case and you were found to have undisclosed income.” Ld. AR is very correct in submitting that the notices issued by AO do not specify the exact charge of default committed by assessee or the clause/limb of section 271ABB under which the assessee’s case would fall. From these notices, it is discernible that the AO was not even clear in his mind as to the default committed by assessee. Therefore, the case of assessee is certainly covered by decisions of **Hon’ble Supreme Court in SSA’S Emerald Meadows, Hon’ble Jurisdictional High Court in Kulwant Singh Bhatia, ITAT Indore in Shri Ashok Bhatia** and **ITAT Indore in Mukesh Kumar Ranka**. The **ITAT, Lucknow Bench in ITA No. 398/CHD/2023 - M/s Happy Steel Pvt. Ltd. Vs. DCIT, order dated 05.06.2024**, has vehemently dealt an identical controversy and also analysed the decisions relied by Ld. AR as well as other decisions of Tribunal and High Courts concerning the same controversy. We re-produce the relevant paras of ITAT’s order:

“3. The brief facts of the case are that a search and seizure operation u/s 132 of the [Income Tax Act, 1961](#) was conducted at the business premises of the assessee ltd. company, who is in the business of iron and steel, on 27.08.2015. Assessment in this case was completed [u/s 143\(3\)](#) of the I.T Act, 1961 on 29.12.2017 and income of the assessee was assessed at Rs. 3,88,23,170/- after making the addition of Rs.88,86,872/- on account of undisclosed investment in stock. During the search operation, physical stock was taken and stock was found to be excess by Rs.1.20 Crores. The statement of Sh. Sanjeev Garg was recorded [u/s 132\(4\)](#) of the I.T. Act, in which, he accepted the discrepancies in the stock and offered Rs.25 Lacs as additional income over and above the normal business income for the A.Y. 2016-17.

4. Aggrieved by the assessment order, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A)-5, Ludhiana vide order dated 23.01.2019, partly allowed the appeal of the assessee. On total addition of Rs.88,86,872/- representing undisclosed investment in stock, the CIT(A) upheld the addition of Rs.11,50,050/- and given relief of the balance amount i.e., Rs.77,36,822/-.

5. Vide the penalty order dated 30.03.2022, penalty of Rs.2.50 lacs was imposed on the assessee [u/s 271AAB\(1\)](#) of the Act.

6. By virtue of the impugned order, the Id. CIT(A) confirmed the penalty.

7. Before us, the Id. Counsel for the assessee contended that the surrender made was general and was not with respect to any specific item as will be borne out from the reading of the statement and letter submitted before the DDIT; that it was only on the stock inventory drawn on the date of search and the tentative Trading Account prepared on the date of search, that the alleged difference was worked out; that the surrender made did not fall within the definition of "undisclosed income" and thus, no penalty was exigible [u/s 271AAB](#) of the Act. **The Id. Counsel for the assessee further submitted that no specific charge had been made out by the Assessing Officer either while passing the assessment order, or while issuing impugned penalty notice; that in such circumstances also, no penalty was exigible u/s 271AAB.** The Id. Counsel for the assessee placed reliance on the Judgment of the Hon'ble Madras High Court in the case of '[Principal Commissioner of Income Tax v/s Shri R. Elangovan](#)' in appeal Nos. 770 and 771 of 2018.

7.1 Reliance has also been placed on the decision dated 20.03.2024, of the Delhi Bench of the Tribunal in the case of '[Jaina Marketing & Associates Vs DCIT](#)', passed in ITA Nos. 225 & 226/Del/2023, for assessment years 2018-19 and 2019-20.

8. On the other hand, the Id. DR has placed strong reliance on the impugned order, contending that as correctly observed by the Id. CIT(A), the [Finance Act, 2012](#) inserted Section 271AAB in the Act, which provided for levy of penalty for concealment of income for the specified period at different rates; that the rates vary from 10% to 90%, depending on whether the undisclosed income has been admitted or not, whether the due taxes have been paid or not, and other conditions; that the perusal of the said section reveals that the penalty u/s 271AAB is levied only for concealment of income and the rates of levy of penalty vary according to the level of compliance made by the assessee with respect to undisclosed income; that hence, specifying the limb in the penalty notice is not a requirement in the present scenario, as the penalty notice is for the concealment of income and the difference is only with respect to the rate at which the penalty has to be levied; that the AO has applied the minimum rate of 10% while levying the penalty for concealment of income keeping in view the facts & circumstances the case; that therefore, the contentions of the appellant on this issue are not acceptable; and that the contention of the AR that there is no striking-off of the limb of penalty is not tenable, as the AO, in the penalty order itself, has given a clear finding that the income falls within the meaning of undisclosed income, as defined in Explanation (c) to Section 271AAB(l)(a). It has also been contended that the Id. CIT(A) has correctly placed reliance on the decision of the Amritsar Bench of

the Tribunal in the case of 'HPCL Mittal Energy Limited Vs. Addl. CIT, Circle-1, Bathinda' in ITA Nos. 554 & 555/Asr/ 2014.

9. Heard. The notice issued to the assessee [u/s 274](#) read with Section 271AAB, a copy whereof has been placed at APB 13, reads as follows:

XXXX

9.1 The Id. Counsel for the assessee submitted that the penalty notice issued [u/s 271AAB](#) of the Act is not, in any manner, depicting the charge against the assessee as to under which clause, i.e., (a), (b) or (c) of Section 271AAB (1) or clause (a), or (b) of [271AAB\(1A\) of the Act](#), penalty is leviable on the assessee. It was submitted that thus, the notice initiating the penalty [u/s 271AAB](#) of the Act is a vague notice and it is, therefore, illegal, and consequently, the order of penalty and the order of the Id. CIT(A) confirming the same deserve to be set aside. The Id. Counsel for the assessee relied on various judicial precedents in support of the said submissions.

9.2 As can be seen from the notice issued [u/s 271AAB](#) of the Act, as reproduced herein above, the assessee rightly contends that it does not depict the charge against the assessee, as to under which clause (a), (b) or (c) of Section 271AAB(1), or clause (a) or (b) of [271AAB \(1A\) of the Act](#), penalty is leviable on the assessee. Therefore, we are of the opinion that the notice initiating penalty u/s 271 AAB 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, as discussed in the following paras have held that the penalty notice should be clear enough to convey to the assessee, the exact charge which is to be levied against him/her/it for levying penalty for the contravention of the related provisions of the Act.

10. 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 a similar notice had 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 of 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 the 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.'

10.1 The Indore Bench of the Tribunal, in ITA No. 869/Ind/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 at 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(l)(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(l)(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 Shraf 161 Taxmann 218 held that "the quasi criminal proceedings u/s 271(l)(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."**

10.2 The Kolkata Bench of the ITAT, in the case of 'Sushil Kumar Paul vs. ACIT' in ITA No. 2274/Kol/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 Ld. 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 271 AAB of the Act may be levied @ 70/20/'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\(l\)\(c\)](#) 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".

10.3. A similar view has 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, '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](#)'.

11. All the above decisions, it is seen have been considered by the Delhi Bench of the Tribunal in '[Jaina Marketing & Associates](#)' (supra), to decide the matter in favour of the assessee.

11.1 Then, **the Hon'ble Madras High Court, in the case of '[Pr. CIT Vs Shri R. Elangovan](#)', order dated 30.03.2021, passed in Tax Appeal Nos. 770 and 771 of 2018 (copy placed at APB 14-19), has held as follows:**

"11. The argument of Mr. T.R. Senthil Kumar, learned Senior Standing Counsel appearing for the Revenue is that the notice issued by the Assessing Officer while imposing penalty clearly stated that it was a notice issued under [Section 274](#) read with [Section 271AAB](#) of the Act. Therefore, the assessee was aware that he had to face penalty proceedings initiated under [Section 271AAB](#) of the Act. That apart, the assessee submitted two replies and was also heard in person and thereafter penalty was imposed. Hence, it is submitted that the order passed by the Tribunal setting aside

the penalty in its entirety is not sustainable. The learned Senior Standing Counsel has also referred to [Sections 274](#) and [275](#) of the Act.

12. In support of his contention, the learned Senior Standing Counsel has placed reliance on the decision of the Allahabad High Court in the case of *PCIT Vs. Sandeep Chandak* [reported in (2018) 93 Taxmann.com 405].

13. Per contra, Mr. N.V. Narayanan, learned counsel appearing for the respondent-assessee would submit that the notice issued prior to initiation of penalty proceedings did not specify as to under which limb of [Section 271AAB](#) of the Act, the Assessing Officer proposed to levy penalty, that this defect goes to the root of the matter and vitiates the entire proceedings and that the Tribunal was right in allowing the assessee's cross objection. In support of his contention, the learned counsel for the assessee has placed reliance on the decisions of the Karnataka High Court in the case of *CIT Vs. Manjunatha Cotton and Ginning Factory* [reported in (2013) 359 ITR 565] and in the case of *CIT Vs. SSA's Emerald Meadows [(2016) 73 Taxmann. Com 241]* and also the decision of this Court, to which, one of us (TSSJ) was a party, in the case of *Babuji Jacob Vs. ITO, Non Corporate Ward 1(2), Chennai* [reported in (2021) 124 Taxmann.com 363].

14. In our considered view, the Tribunal is fully right in vacating the penalty on the ground that the notice was defective. The provisions of the Act have clearly laid down the procedure to be followed and adhered to while imposing the penalty. The proposal for such penalty proceedings was separately initiated upon completion of assessment and there may be cases where the assessee would not even contest the order of assessment. But that would not preclude the assessee from challenging the penalty proceedings, as penalty proceedings are independent and the procedure required to be followed cannot be dispensed with.

15. As rightly pointed out by the learned counsel appearing for the assessee, [Section 271AAB](#) of the Act, which deals with penalty consists of three contingencies. Therefore, the Assessing Officer should point out to the assessee as to under which of the three clauses, he chooses to proceed against the assessee so as to enable the assessee to give an effective reply. Since the same has not been mentioned, the assessee has been denied reasonable opportunity to put forth their submissions. The Tribunal, in paragraph 5 of the impugned order, has verbatim reproduced the penalty notice and we find that the notice is absolutely vague and none of the irrelevant portions had been struck off nor the relevant portions had been marked or indicated. Hence, the Tribunal is right in observing that the penalty could not have been levied based on such defective notice and more particularly, when the assessee has been strenuously canvassing the jurisdictional issue from the inception.

16. In so far as the decision of the Allahabad High Court in the case of *Sandeep Chandak* is concerned, the factual position is slightly different. This decision is for the principle that where the assessee, in the course of search, makes a statement, in which, he admits the undisclosed income and specifies the manner, in which, such income has been derived, then the provisions of [Section 271AAB](#) of the Act would automatically get

attracted. There can be no quarrel over this proposition. But, once the provisions get attracted, it is incumbent on the part of the Assessing Officer to specify as to under which clause in 271AAB(1) of the Act, he intends to proceed against the assessee. In the instant case, in the absence of such material in the penalty notice, it has to be held that the notice is defective.

*17. The decisions of the Karnataka High Court in the cases of Manjunatha Cotton and Ginning Factory and **SSA's Emerald Meadows** and the decision of this Court in the case of Babuji Jacob clearly support our above conclusion. For all the above reasons, we find no grounds to interfere with the common order passed by the Tribunal.*

18. Accordingly, the above tax case appeals are dismissed confirming the common impugned order passed by the Tribunal. No costs. Consequently, the connected CMP is also dismissed."

11.2 So far as regards the decision of the Amritsar Bench of the Tribunal in 'HPCL Mittal Energy Limited' (supra), which has been relied on by the CIT(A), it is seen that the said decision pertains to levy of penalty [u/s 271\(1\)\(c\)](#) of the Act. The decisions discussed hereinabove, on the other hand, are directly on penalty levied [u/s 271AAB\(1\)](#) of the Act, which is the penalty presently in question.

12. No decision contrary to the decisions discussed hereinabove has been brought to our notice.

13. For the detailed reasoning and discussion contained in the preceding paragraphs, considering the fact that no specific charge has been mentioned in the penalty notice issued u/s 271AAB of the Act, following the decisions discussed herein above, ground No.3 is accepted and the penalty is deleted.

14. In view of our above decision on Ground No.3, nothing further survives for adjudication, nor was anything else argued.

15. In the result, the appeal is allowed."

[Emphasis supplied]

12. Respectfully following the above decision of **M/s Happy Steel Pvt. Ltd.** as also other decisions discussed therein, this Bench is inclined to hold that the penalty proceeding conducted by AO in present case on the strength of aforesaid notices issued by AO, is invalid and consequently the penalty-order is not sustainable. Accordingly, we quash the penalty-proceeding at the very threshold on legality aspect itself as claimed by assessee. The assessee succeeds in this appeal.

13. Since we have quashed penalty-order itself, there is no necessity to adjudicate other grounds as of now, the same are kept open undecided.

14. Resultantly, this appeal is allowed.

Order pronounced by putting on notice board
as per Rule 34 of ITAT Rules, 1963 on 24/02/2025

Sd/-

(UDAYAN DAS GUPTA)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 24/02/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore