

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT**  
**MEMBER**  
**AND**  
**SHRI PARESH M JOSHI, JUDICIAL MEMBER MEMBER**

**ITA Nos. 673 to 679/Ind/2024**  
**Assessment Years: 2000-2001 to 2006-2007**

Prem Chawla, G-2/161, Gulmohar Colony, Bhopal	<b><u>बनाम/</u></b> Vs.	ACIT-1(1), Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
<b>PAN: AAOPC3494N</b>		
Assessee by	Shri S.S. Deshpande, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	19.03.2025	
Date of Pronouncement	07.04. 2025	

**ITA Nos. 680 to 684/Ind/2024**  
**Assessment Years: 2001-2002 to 2004-2005 & 2006-2007**

Prem Chawla, L/H of Late Smt. Sudesh Chawla G-2/161, Gulmohar Colony, Bhopal	<b><u>बनाम/</u></b> Vs.	ACIT-1(1), Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
<b>PAN: AAPPC0132J</b>		
Assessee by	Shri S.S. Deshpande, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	19.03.2025	
Date of Pronouncement	07.04. 2025	

**ITA No. 755/Ind/2024**  
**Assessment Year: 2005-2006**

Prem Chawla, L/H of Late Smt. Sudesh Chawla G-2/161, Gulmohar Colony, Bhopal	<b><u>बनाम/</u></b> Vs.	ACIT-1(1), Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
<b>PAN: AAPPC0132J</b>		
Assessee by	Shri S.S. Deshpande, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	20.03.2025	
Date of Pronouncement	07.04. 2025	

**आदेश / O R D E R**

**Per Paresh M Joshi, J.M.:**

This is an appeal filed by the assessee before this Tribunal in terms of Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act' for sake of brevity). The assessee is aggrieved by the order bearing Number CIT(A)-3 Bhopal/IT/10289/2016-17/139 dated 28.06.2024 of CIT(A) u/s 250 of the Act, which is hereinafter referred to as the "**impugned order**". The relevant Assessment Year is 2000-2001 and the

corresponding previous year period is from 01.04.1999 to 31.03.2000.

2. **FACTUAL MATRIX**

2.1 At the outset and threshold it is required to be noted that in all there are 13 appeals **where common issue of penalty u/s 271(1)(c) of the Act arises for adjudication and adjudgment.**

Since common issue arises for consideration both the parties agreed that all these 13 appeals be heard together and be disposed off **by a common order for sake of convenience and ease.** We thus take up Appeal No.673/Ind/2024 for Assessment Year 2000 to 2001 **as lead case** as facts and circumstance in other appeals are *pari mataria*.

2.2 That the assessee is an individual deriving income from the business of manufacturing and sale of paints and varnishes.

2.3 That the assessee maintains **regular books of accounts and Tax Audit Reports** are regularly filed.

2.4 That **a search** was conducted at the premises of the assessee on 07.09.2006.

2.5 That vide “**first assessment order**” dated **17.12.2007** total income of the assessee was computed as **Rs.31,57,850/-**. The additions made were broadly under following category:-

1. Disallowance out of purchases
2. Disallowance out of wages and salary, unexplained unsecured loan/security deposits and unexplained investment.

That the “**first assessment order**” dated **17.12.2017** was u/s 153A r.w.s. 143(3) of the Act.

2.6 That the “first assessment order” dated **17.12.2007** (supra) was challenged by the assessee in the first appeal before CIT(A) who vide order No.CIT(A)-I/BPL/IT-399/2007-2008 dated **23.07.2008** granted to the assessee relief of Rs.25,41,285/-. This appellate order of CIT(A) is hereinafter referred to as “**first appellate order of CIT(A)**” which was dated **23.07.2008**.

2.7 That the revenue being aggrieved by the aforesaid first appellate order of CIT(A) dated 23.07.2008 preferred an appeal before **this Tribunal** who vide order **Number IT(SS)No.209/Ind/**

2008 dated 31.03.2011 set aside the **first appellate order** dated 23.07.2008 by making following observation which is reproduced as below:-

*“In view of the above, we are of the considered opinion that the order passed by the learned Commissioner of Income Tax (Appeals) is devoid of any merit which deserves to be set aside. As it is evident from the above discussion that various documents were submitted by the assessee for the first time before the learned Commissioner of Income Tax (Appeals) and the Assessing Officer has not got any opportunity to verify the same. In the interest of justice and fair play, we restore these appeals back to the file of the Assessing Officer for deciding the same afresh in the light of our above discussion. We direct accordingly.”*

The aforesaid order of ITAT is hereinafter referred to as the **“First appellate order of the ITAT”** which was dated **31.03.2011**.

2.8 That **after** the “first appellate order of ITAT” the assessment proceedings **commenced afresh before Ld. A.O**, who during the course of set aside assessment proceedings once again asked the

assessee why the addition of Rs.9,04,325/- made in the original assessment (first assessment order) should not be again made to the total income. In response thereto to this, the assessee submitted that ***"In the assessment addition of Rs.9,04,325/- was made being disallowance out of total purchase of raw material of Rs.36,17,299/-. Sir, it is submitted that the assessee maintains regular and proper books of accounts and all the purchases are fully vouched. Sir, on going through the aforesaid account, you will appreciate that all the payments made to the supplier were from the account payee cheques only. Sir, when then the all purchases to supplier are made by account payee cheques, it is clear that all the purchases are genuine and hence, no disallowance should be made in this account"***. The Ld. A.O in his assessment order did not accept the contention **because some of vouchers were not properly maintained, names of the persons to whom amount paid, could not be verified and therefore addition of Rs.9,04,325/- was made.** A satisfaction that penalty proceedings u/s 271(1)(c) is separately being initiated was too recorded. The assessee was also asked why

addition of Rs.46,177/- made in the original assessment should not be made again to the total income. In response to this, the assessee submitted that ***“ it is submitted that in the original assessment, addition of Rs.46,117/- was made being 1/3<sup>rd</sup> disallowance out of the total wages and salary of Rs.1,38,352/- as debited in the Profit & Loss Account. Sir, it is submitted that the assessee maintains regular and proper books of accounts and all the expenses debited in this account are genuine and proper and are supported by the vouchers incurred for these expenses. This is evident from the copy of ledger account of wages and salary. Further, the expenses claimed is reasonable and proportionate as compared to the turnover of the business. Hence, it is requested that no disallowance should be made in this account”***. The Ld. A.O in his assessment order did not accept the contention of the assessee because some of the vouchers were not properly maintained, names of the persons to whom amount was paid could not be verified and hence addition of Rs.46,117/- was made. A satisfaction that penalty proceedings u/s 271(1)(c) is being initiated is

separately recorded. The assessee was also asked why the addition of Rs.36,568/- made in the original assessment should not be again made to the total income. In response to this, assessee submitted that *"in the original assessment, addition of Rs.36,568/- was made out of the total salary of Rs.1,46,273/- as debited in the Profit & Loss Account. Sir, it is submitted that all the expenses debited in this account are genuine and proper and are supported by the vouchers incurred for these expenses. Further, the expenses for salary is very reasonable and proportionate as compared to the turnover of the business. Hence, it is requested that no disallowance should be made in this account"*. The Ld. A.O in his assessment order did not accept the contention of the assessee because some of the **vouchers were not properly maintained, names of the person** to whom amount paid **could not be verified** and hence **addition of Rs.36,568/- was made**. A satisfaction that penalty proceedings u/s 271(1)(c) is being initiated is separately recorded. The assessee was also asked why the addition of Rs.8,74,400/- made in the original assessment should not be again made. In response to this,

assessee submitted that *"It is submitted that the addition of Rs.8,74,400/- was made for security deposits credited in the balance sheet treating the same as unexplained and hence, added as income from undisclosed sources u/s 69 of the Income Tax Act. Sir, as already stated, the assessee maintains regular and proper books of accounts and the balance sheet in which the said security deposits appear was attached alongwith the original return as well as with the return filed u/s 153A. Sir, all the security deposits are received from the dealers and from the customers to whom goods were supplied. In few cases, it is adjusted later on in incoming years out of the sales and in few cases it is continued by the dealer who are in regular touch with the assessee. The copy of account of security deposits with the name and address of the dealer was submitted before Hon'ble CIT (Appeals) and the same are enclosed herewith also. From this copy of account and the list of dealer from whom, security deposits received, it is apparently clear that all the dealers/customers who has given the security deposits are genuine".* The Ld. A.O in his assessment order did

not accept the contention of the assessee because **no details of security deposits** as to were from **it is received** were given by the assessee and hence addition of Rs.8,74,400/- was made. A **satisfaction that penalty proceedings u/s 271(1)(c) is being initiated separately is recorded.** The assessee was also asked why the addition of **Rs.6,79,875/- made in the original assessment** should not be again made. In response to this, assessee submitted that *"It is submitted as per the agreement to sale the assessee has purchase 0.25 acre land at Rs.6,79,875/-. The registry of the same was made for Rs.2,50,000/- and this amount of Rs.2,50,000/- ws paid by cheques. The difference of Rs.6,79,875/- minus Rs.2,50,000/- comes to Rs.4,29,875/- which the assessee has surrendered in the return filed u/s 153A and included in the total surrender of Rs.4,50,000/-. Sir, being the assessee himself declared the on money of Rs.4,29,875/- in the return filed u/s 153A (out of the total declaration of Rs.4,50,000/-) and the balance of Rs.2,50,000/- was made by cheque which is tallied with the copy of registered sale deed, no addition should made in this account"*. The Ld. A.O in his assessment

order did not accept the contention of the assessee because the assessee himself has accepted that payment of **Rs.4,29,875/-** has been made out of the books and hence addition of **Rs.4,29,875/-** was made. A satisfaction that penalty proceedings u/s 271(1)(c) is being initiated separately is recorded. Further the assessee in the return of income filed in response to the notice u/s153A, the assessee had shown undisclosed income of **Rs.4,50,000/-**. The assessee had not given the details of the surrendered income. Since the assessee himself has shown additional income, due credit for the same is being given by deducting the same from the total assessed income.

2.9 The Ld. A.O by an assessment order dated 19.03.2013 u/s 153A r.w.s. 143(3) of the Act computed the income of the assessee as follows:-

Income returned including undisclosed income surrendered (Rs.4,50,000/-)	Rs.	6,16,565/-
Add:Addition for unexplained excessive purchases (para-5)	Rs. 9,04,325/-	
Add:Unexplained wages & salary (para-6)	Rs. 46,117/-	
Add: Unexplained salary (para-7)	Rs.	

	36,568/-	
Add:Unexplained unsecured loan/security deposit (para-8)	Rs.8,74,400/-	
Add:Undisclosed investment in purchase of land (para-9)	Rs.4,29,875/-	25,41,825/-
Total income	Rs.	31,57,850/-
Less:Credit for income surrendered by the assessee (Para-10)	Rs.	4,50,000/-
Total assessed income	Rs.	27,07,850/-

The aforesaid assessment order dated 19.03.2013 is hereinafter referred to as “**Second Assessment order**”.

2.10 The assessee being aggrieved by the aforesaid “**Second Assessment Order**” (supra) preferred an appeal before CIT(A) once again against the aforesaid additions and the Ld. CIT(A) allowed the **substantial relief**. Thereafter the assessee has filed appeal before Hon’ble ITAT. The Hon’ble ITAT has allowed the appeal of the assessee by giving following finding which are as under:-

*21. In these given facts and circumstances of the case and following judicial precedence in our considered view the sales declared by the assessee in the respective returns of income should be taken as a basis and net profit rate can be applied evenly for all the years which should be higher than the highest net profit offered by the assessee(s) in any of the assessment years.. We find that the net profit offered by the assessee for Assessment Year 2001-02 to Assessment Year 2006-07 is at 0.37%, 1.71%, 1.72%, 2.99%, 1.84%, 0.95% and 1.97% respectively. In the case of another assessee i.c. Shri Prem Chawla net profit rate offered for Assessment Year 2001-02 to Assessment Year 2006-07 in the concern M/s Anand Paints is 2.31%, 3.52%, 1.36%, 1.44%, 1.94%, 1.83% and 2.67% respectively and in case of Smt. Sarita Chawla Net Profit Rate of 3.2% and 4.9% is offered for Assessment Year 2005-06*

*and Assessment Year 2006-07. From perusal of above net profit rate we find that the net profit rate is ranging from 0.37% to 5% approx. It is also not disputed that during the both rounds before the lower authorities the reasons best known to the assessee necessary documentary evidence to prove the genuineness of the purchases and expenses were not placed and books of accounts were claimed to be lost when the proceedings were undergoing before the appellate authorities. The element of "carelessness" on the part of the assessee cannot be refused. However looking to the fact that the issues raised before us are in the second round and the matters pertaining to Assessment Year 2000-01 to Assessment Year 2006-07 and thus with a view to end litigation, being fair to both the parties and to meet the end of the justice we are of the considered view that NET PROFIT RATE OF 5% of the disclosed turnover in the business concern owned by all the assessee(s) in the instant appeal before us i.e. in the case of Late Smt. Sudesh Chawla, Shri Prem Chawla for Assessment Year 2000-01 to Assessment Year 2006-07 and in the case of Smt. Sarita Chawla for Assessment Year 2005-06 and Assessment Year 2006-07 shall be sufficient to cover up all the discrepancies relating to unverifiable purchase, freight and cartage, wages & salary and salary expenses. We accordingly order so and direct the Ld. A.O to compute the net Profit for the above stated assessee(s) @5% of the disclosed turn 12 over and if in case net profit rate is offered on a higher percentage i.e. more than 5% the same should be accepted. Our this decision of applying Net Profit Rate of 5% shall be sufficient to cover up the disallowance of purchase, freight and cartage, wages & salary and salary expenses in dispute before us. We thus delete the disallowance of purchase, freight and cartage, wages and salary and salary expenses challenged before us in the ground mentioned in para 14. In the result respective grounds are partly allowed as per terms indicated above."*

**2.11 The above premises drawn up by us deals with quantum assessment proceedings.**

2.12 In so far as penalty proceedings **u/s 271(1)(c ) of the Act** is concerned the assessee for Assessment Year 2000-2001 was issued a show cause notice dated 19.03.2013 calling upon him to show cause why penalty should not be imposed upon him and

*Prem Chawla & other*  
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was requested to attend the office of Ld. A.O on 26.03.2013. That an option was given to him that if does not wish to be heard in person, then he may submit a written submissions which should reach Ld. A.O on or before 26.03.2013. It was also stated that the same would be considered before the matter is disposed off. Copy of said notice is reproduced below:-

*OFFICE OF THE ASSTT. COMMISSIONER OF INCOME TAX, 1(2),  
AAYAKAR BHAWAN, HOSHANGABAD ROAD, BHOPAL*

*Bhopal Dated 19.03.2013*

*PENALTY NOTICE u/s 271(1)(c) OF INCOME TAX ACT, 1961*

*PAN AAOP03494N*

*To*

*Shri Prem Chawla,*

*Prop. Of Anand Paints & Anand Industries*

*G-2/161, Gulmohar Colony, Bhopal*

*Sir/Madam,*

*Sub:Penalty proceeding u/s .271(1)(c) of the Income Tax Act 1961  
for the AY 2000-01*

*In connection with the penalty proceedings u/s. 271(1)(c) for the  
assessment year(s) 2000-01 you are requested to attend my office on  
26.03.2013 at 11.00 AM to show cause why penalty should not be*

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*imposed. However, if you do not wish to be heard in person in this regard, you may submit your written submissions so as to reach me by the above date which will be considered before disposal of the matter.*

*Sd/-*

*(Virendra Kumar Patel)*

*Asstt Commissioner of Income Tax-1(2), Bhopal*

2.13 That yet another show cause notice dated 25.01.2016 for Assessment Year 2000-2001 for penalty purposes u/s 271(1)(c) was issued to the assessee calling upon him to show cause that why the penalty u/s 271(1)(c) should not be imposed upon him. The assessee was requested to appear on 01.02.2016 before Ld. A.O. It was also stated therein that if assessee does not wishes to be heard in person then in that even he may submit a written explanation/reply which should reach on or before 01.02.2016. It was stated therein that the same would be considered before the matter is disposed off. Copy of said notice is reproduced below:-

*OFFICE OF THE ASST. COMMISSIONER OF INCOME TAX-1(1), BHOPAL*

*Room No. 109, Aavakar Bhawan, Hoshangabad Road, Bhopal-462011: (0755) 2525341*

*PAN: AAOPC3494N*

*Dated: 25.01.2016*

*To*

*Shree Prem Chawla,*

**Prem Chawla & other**  
**ITA Nos. 673 to 684/Ind/2024 & 755/Ind/2024- AY 2000-2001 to 2006-07**

*Prop. M/s Anand Paints & M/s Anand Industries,  
G-2/161, Gulmohar Colony, Bhopal*

*Sub: Penalty Proceedings u/s 271(1)(c) under Income Tax Act, 1961 -  
Show cause for A.Y. 2000-01 regarding.*

*In connection with penalty proceedings u/s 271(1)(c) of Income Tax Act for the Assessment Year 2000-01, you are requested to appear in person or by an authorized representative in my office on 01.02.2016 at 12.30 PM to show cause that why the penalty u/s 271(1)(c) should not be imposed. However, if you do not wish to be heard in person or through an authorized representative, you may submit your written explanation/ reply so as to reach me on or before the date mentioned above and your written reply will be considered before disposing of the matter.*

*Sd/-  
(Yogeesh Mishra)*

*Asstt. Commissioner of Income Tax-1(1),*

*Bhopal*

2.14 That after the issue of above two notice(s) supra the Ld. A.O passed a penalty order u/s 271(1)(c) of the Act dated 28.03.2016 wherein penalty of Rs.6 lakh was imposed on the assessee under Section 271(1)(c) of the Act. The said penalty order is hereinafter referred to as the **"impugned penalty order of Ld. A.O."**

2.15 That the assessee being aggrieved by the aforesaid "impugned penalty order of Ld. A.O" preferred an appeal before Ld. CIT(A) who by **"impugned order dated 28.06.2024"** reduced the penalty amount u/s 271(1)(c) of the Act from Rs.6 lakh to

Rs.2 lakh fifty thousand. The assessee thus got a relief of Rs.3.5 lakhs in penalty amount.

2.16 That the assessee being aggrieved by the aforesaid "impugned order" has preferred an appeal before this Tribunal and has raised following grounds of appeal in Form No.36 against the "impugned order" which are as under:

*1. That on the facts and in the circumstances of the case, the learned CIT (Appeals)-3, Bhopal erred in maintaining the penalty u/s 271(1)(c) at Rs.2,50,000/- out of total penalty of Rs.6,00,000/-and thereby giving part relief of Rs.3,50,000/-only.*

*2. That on the facts and in the circumstances of the case, the order maintaining the part penalty by the CIT (Appeals)-3, Bhopal is unjust, unfair and bad in law as the same was maintained without considering the order of the Assessing Officer as in this case no order passed by the Assessing Officer giving effect to the order of Hon'ble ITAT.*

*3. That on the facts and in the circumstances of the case, the learned CIT (Appeals)-3, Bhopal erred in confirming the part penalty u/s 271(1)(c) of the Act for concealment of income without considering the fact that the addition confirmed was in the nature of estimated income on which penalty for concealment is not imposable.*

*4. That on the facts and in the circumstances of the case, the learned CIT (Appeals)-3, erred in confirming the penalty u/s 271(1)(c) on the addition of Rs.4,29,875/- being undisclosed investment in purchase of land as this amount was already offered by the appellant in the return filed u/s 153A and hence, no penalty is imposable if the assessee suo-motto offered the income in the return.*

*5. That the appellant craves leave to add, to urge, to alter or to amend any of the ground of the appeal on or before the date of hearing."*

**Additional Grounds of appeal:**

*1. The levy of penalty is bad in law since, no specific satisfaction in the assessment order or penalty notice has been recorded and mentioned by the Ld. AO.*

*2. The Ld. AO has not mentioned about the specific charge of penalty in the assessment order, penalty notice and the penalty order. Whether, the penalty levied is for concealment of income or furnishing of inaccurate particulars of income has not been mentioned by the Ld. AO.*

*3. In view of the judgment of the Hon. MP High Court, in the case of PCIT vs Kulvant Singh Bhatia 33 ITJ 777, the levy of penalty is bad in law since, no specific charge/satisfaction has been recorded and mentioned by the Ld. AO.*

*4. The levy of penalty is bad in law and hence be cancelled."*

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 19.03.2025 when the Ld. AR for and on the behalf of the assessee appeared before us. The Ld. AR has placed on record of this Tribunal submissions dated 18.03.2025 for 19.03.2025 in support of **additional grounds of appeal (supra)** and has interalia contended before us that issue regarding **legality of penalty could not be taken up by them on earlier occasions i.e. before CIT(A)**. However on the basis of papers available on record the legal issue now raised can be decided without **any further investigation or inquiry**. Reliance was placed on the judgment of Hon'ble Supreme Court in case of ***NTPC v/s CIT reported in 229 ITR 383***. We then heard the Ld. AR extensively

on additional grounds raised (supra) however before that Ld. AR invited our attention to the brief history of the case with regard to quantum assessment proceedings which we have spelt out in factual matrix (supra). **Finally concluding on issue of quantum assessment the Ld. AR contended that this Tribunal vide order dated 26.11.2020 page 136 to 199 of PB has gone by 5% net profit basis to levy additions.** The Ld. AR then contended that in so far as notice(s) on penalty u/s 271(1)(c) of the Act is concerned **neither of the 2 (two) limbs have been mentioned. It is not averred** in the notice(s) as to whether the assessee **has concealed the particulars of his income or furnished inaccurate particulars of such income.** The **non mentioning of specific charge** in the notice(s) for imposition of penalty u/s 271(1)(c) of the Act **vitiates the notice(s) including orders made on basis of such notice(s).** The Ld. A.O has not spelt out in the notice(s) for penalty the **necessary and material ingredients explicitly and expressly u/s 271(1)(c) of the Act.** Further even the "penalty order of Ld. A.O" nothing is expressly set out u/s 271(1)(c) of the Act whether the case made out is under concealment of particulars of income or furnished

inaccurate particulars of such income. When no specific charge is mentioned in the notice(s) and in the impugned penalty order with regard to u/s 271(1)(c) of the Act , the entire penalty imposed by Ld. CIT(A) in impugned order deserves to be set aside by this Tribunal. Further law in this regard is fairly settled. The Ld. AR then invited our attention to paper book page 1 to 6 which are copies of notice(s) all dated 19.03.2013 and follow up notice(s) are dated 25.01.2016. **Paper book page 7 to 13 that only bare Section 271(1)(c) of the Act is stated and no specific material ingredients of Section 271(1)(c) of the Act is alleged like concealment of particulars of income and/or furnished inaccurate particulars of income.** The Ld. AR in so far as issue of quantum was concerned contended that G.P addition of **5% is done that too on estimation finally even by ITAT.** Per contra Ld. DR has interalia contended that at the original stage of penal proceedings this specific ground is not taken at all. Further this specific ground is not even taken up during first appellate stage i.e. before Ld. CIT(A) hence the assessee is **estopped** from taking up this specific ground at the Tribunal stage. The Ld. DR further contended that the assessee

has not raised any plea of prejudice due to absence of specific charge Under Section 271(1)(c) of the Act in fact by not taking any plea of prejudice to the assessee in any manner whatsoever the issue raised becomes hyper technical and that hyper technical issue should be avoided and penalty proceedings should be challenged/contested on meritorious grounds only. No meritorious grounds are canvassed by the assessee. In fact the assessee has 'Acquiescence' in the proceedings and has given assent to the penal proceedings by participation. The Ld. DR contended that quantum assessment cannot strictly be said to be **on estimation basis**. There is full and complete failure on the part of the assessee within the meaning of Section 271(1)(c) of the Act which is demonstrated in Factual Matrix by us (supra) while dealing with quantum. **The Ld. DR has relied upon the quantum assessment order of Ld. A.O(supra)**. Further observations of this Tribunal in their order dated 26.11.2020 particularly para 21 (supra) **speaks volumes about assessee**. The Ld. DR placed reliance on following ***"It is also not disputed that during the both rounds before the lower authorities, the reasons best known to the assessee necessary***

*documentary evidence to prove the genuineness of the purchases and expenses were not placed and books of accounts were claimed to be lost when the proceedings were undergoing before the appellate authorities. The element of carelessness on the part of the assessee cannot be refused” .*

The Ld. DR contended that **no blind additions are done and finding of ITAT in their order dated 26.11.2020 has attained finality on quantum.** The case is one of search and seizure. Assessee has failed to produce any documents. **In rejoinder** argument Ld. AR submitted that **assessment is not made on search and seizure basis/documents. No incriminating material was found during search and seizure.** The assessee has not done any concealment and even if assessee has not been able to substantiate his expenses it does not amount to concealment of income or furnishing inaccurate particulars in law.

4. **Observations, findings & conclusions.**

4.1 We now have to decide the legality, validity and propriety of the “Impugned Order” basis records of the case and rival contentions canvassed before us.

4.2 We have carefully perused records of the instant case before us for **adjudication** and **adjudgment** in second appeal.

4.3 At the outset and threshold we have to examine whether in law the assessee is entitled to raise legal issue as and by way of fresh ground about legality of penalty proceedings Under Section 271(1)(c) of the Act basis contentions canvassed before us keeping in mind judgment of **Hon'ble Supreme Court of India in case of NTPC v/s CIT reported in 1998 (229) ITR 383 (SC)**.

We have examined the issue and are of the considered view that legal issue whether the penalty proceedings initiated Under Section 271(1)(c) of the Act is correct or not in the instant case is a pure question of law as it does not involve any investigation or inquiry with regard to any fact. The question of law clearly arises from the facts as found by the authorities below and it has bearing on liability of the assessee. Penalty is in addition to tax liability of the assessee. It entails serious civil consequences to the assessee too. We conquer with the contention of Ld. AR that it is incumbent upon the revenue to state expressly in the notice(s) supra the material ingredients of Section 271(1)(c) of the Act. The authorities must specify as to whether the case is one of

concealment of particulars of income or furnishing inaccurate particulars of income. In the instant case **nothing is spelt out by the Revenue, save and except bare Section 271(1)(c) of the Act which perse is not sufficient compliance of law.** While issuing notice(s) for penal proceeding **authorities must be clear in their mind at the time of issue itself as to whether charge of concealment of particulars of income would hold or whether the charge of furnishing inaccurate particulars of income would hold. Failure to mention either of these charges within the meaning of Section 271(1)(c) of the Act would vitiate the entire penal proceedings against the assessee.** We are fortified in our view in view of the judgment of M.P High Court in case of Principal Commissioner of Income Tax V/s Kulwant Singh Bhatia dated 9<sup>th</sup> May, 2018 in ITA No.9 to 14 of 2018 wherein Hon'ble Divisional Bench has held as under:-

*"5. The respondent - assessee challenged the said order by filing separate six appeal before the Income Tax Appellate Tribunal, Indore, Bench Indore. The learned Tribunal considering the fact that these six appeals involved a common issue arising out of the same set of facts and heard together and all the six appeals are being disposed of by passing a consolidated order on 11.8.2017. The ground raised before the ITAT, was that the imposition of penalty is illegal in as much as vague and cryptic show-cause notice was issued to the assessee under [Section 274](#) of the Act of 1961, without making him aware of*

*the specific charge levied against him and, therefore, in view of the decision of the Karnataka High Court in the case of CIT V/s. Manjunatha Cotton Ginning Factory, (2013) 359 ITR 565 (Kar), the penalty so imposed by the Assessing Officer deserve to be deleted.*

6. *The learned Tribunal relying on the decision of the Apex Court in the case of National Thermal Power Co. Ltd. V/s. CIT, (1998) 229 ITR 383 (SC) permitted the assessee to raise the additional ground as there is pure question of law and no further inquiry or investigation on facts is required. It was submitted before the Tribunal that the income shown in the return were offered under [Section 132 \(4\)](#) as well as returns filed under [Section 153A](#). These incomes have been accepted in the assessment order without any variation and objection. The blanket penalty proceedings were initiated in all cases under [Section 271\(1\)\(c\)](#). The penalty notice under [Section 274](#) read with [Section 271\(1\)\(c\)](#) were issued in the typed format without striking off either of two charges, i.e., which is reproduced as :*

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

7. *It is submitted that the show-cause notice under Section 274 is not mere empty formality but it has a definite purpose to make the assessee aware of the exact charges against him and the case, which is required to meet out. A clear notice not only a statutory requirement but even for the purpose of principle of 'audi alteram partem' which requires that no one should be condemned unheard, a notice in clear term specifying the clear charges against an assessee is required to be given by an Assessing Officer before imposing a penalty. It was submitted that by not striking off the inapplicable clause, the learned Assessing Officer has left the matter open for a complete guess work on the part of the appellant for presuming charges levelled against him and in such situation, it cannot be said that an effective opportunity of being heard was given to the appellant as contemplated under [Section 274](#) of the Act of 1961. Thus, the penalty proceedings were initiated without specifying any particulars or specific charge against the assessee in either the assessment order or even the penalty notice. It is important to point out that no charge either of "concealment of income" or "furnishing of inaccurate particulars" was made in the assessment orders in all these cases. The perusal of the assessment order would show that it was stated that penalty proceedings are initiated under [Section 271\(1\)\(c\)](#) and under [Section 271\(AAA\)](#).*

8. *In the case of CIT V/s. Manjunatha Cotton Ginning Factory (supra), it was observed by the Karnataka High Court in para 59 that the practice*

of the Department sending a printed form where all the ground mentioned in [Section 271](#) are mentioned would not satisfy the requirement of law when the consequences of the assessee not rebutting the initiated presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the provisions have to be held to be strictly construed, notices issued under [Section 274](#) should satisfy the grounds, which he has to meet specifically. Otherwise, principle of natural justice is offended if the show cause notice is vague. Even in the matter of search case where penalty is levied under Explanation 5A to [Section 271\(1\)\(c\)](#), it was held by the Karnataka High Court that the show-cause notice under [Section 274](#) was defective as it does not spelled out the ground on which the penalty is sought to be imposed and consequently penalty imposed was cancelled. The decision of CIT V/s. Manjunatha Cotton Ginning Factory (supra) was further followed by the Karnataka High Court in the case of CIT V/s. SSA'S Emerald Meadows, (2016) 73 taxman.com 248 (SC) / dated 23.11.2015 (ITA 380/2015), the High Court has dismissed the appeal of the revenue by observing that the Tribunal has allowed the appeal of the assessee holding that the notice issued by the Assessing Officer under [Section 274](#) read with [Section 271\(1\)\(c\)](#) of the Act of 1961 was bad-in-law as it did not specify which limb of [Section 271\(1\)\(c\)](#) of the Act of 1961, the penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars. The Tribunal while allowing the appeal of the assessee, had relied on the decision of the Division Bench of Karnataka High Court decision in the case of CIT V/s. Manjunatha Cotton Ginning Factory (supra). It is further pointed out that the SLP filed by the Deptt. before the Apex Court on 5.8.2016 in the matter of CIT V/s. SSA'S Emerald Meadows (supra) was dismissed. In the case of CIT V/s. Suresh Chandra Mittal, (2000) 251 ITR 9 (SC), the Apex Court has upheld the decision of M.P. High Court wherein, in similar circumstances, it was held that the initial burden lies on the revenue to establish that the assessee had concealed the income or had furnished inaccurate particulars of such income. In the present case, in show-cause notice the Assessing Officer has not specified specifically charges, there was no such mention.

9. Considering the aforesaid, the Tribunal has held that the penalty levied under [Section 271\(1\)\(c\)](#) of the Act of 1961 is not sustainable in law, as no specific charge was levied in penalty show-cause notices and allowed the appeal No.ITA (Appeal) 414/Ind/2012 and other five appeals.

10. It is submitted that the provision of [Section 271\(1\)\(c\)](#) together with Explanation 5(A) brings the assessee liable for imposition of penalty in

*respect of additional income, which has been offered following the search and the Assessing Officer is satisfied that it is a fit case for initiation of penalty proceedings under [Section 271\(1\)\(c\)](#) and [271\(AA\)](#) of the Act of 1961. The learned Tribunal has committed an error in allowing the appeal and setting aside the well reasoned order of penalty. She also submits that the ITAT erred in not considered the satisfaction recorded by the Assessing Officer. She during the course of the arguments very specifically admitted that tax effect in this case is only Rs.2,84,090/- for the assessment year 2002-03. The total amount of penalty for the assessment year in all these appeals for the assessment years 2002-03 to 2007-08 is Rs.24,39,753 and the learned ITAT has decided all these appeals by composite order dated 11.8.2017. It is covered in para 5 of the Circular No.21 of 2015 dated 10.12.2015 and, therefore, the present appeals have been filed.*

*11. On due consideration of the arguments of the learned counsel for the appellant, so also considering the fact that the ground mentioned in show-cause notice would not satisfy the requirement of law, as notice was not specific, we are of the view that the learned Tribunal has rightly relying on the decision of CIT V/s. Manjunatha Cotton Ginning Factory (supra) and CIT V/s. SSA'S Emerald Meadows (supra) rightly allowed the appeal of the assessee and set aside the order of penalty imposed by the authorities. No substantial question of law is arising in these appeals. ITA.No(s).9/2018, 10/2018, 11/2018, 12/2018, 13/2018 and 14/2018, filed by the appellant have no merit and are hereby dismissed."*

4.4 In view of the **judgment of jurisdictional High Court** on issue of law (supra) the arguments canvassed by Ld. DR does not survive and needs no determination of same by us. In any event question of law (supra) on issue of penalty U/s 271(1)(c) of the Act is raised before us which is final fact finding authority and issue of any prejudice, laches, etc. just does not arises as assessee has perse raised a **legal issue only which we have found to have a substance.**

4.5 The above judgment shall squarely cover mutatis mutandis following appeals too:

Name of assessee	ITA No.	Assessment Year
Prem Chawla	674/Ind/2024	2001-2002
	675/Ind/2024	2002-2003
	676/Ind/2024	2003-2004
	677/Ind/2024	2004-2005
	678/Ind/2024	2005-2006
	679/Ind/2024	2006-2007
Prem Chawla L/H Sudesh Chawla	680/Ind/2024	2001-2002
	681/Ind/2024	2002-2003
	682/Ind/2024	2003-2004
	683/Ind/2024	2004-2005
	684/Ind/2024	2006-2007
	755/Ind/2024	2005-2006

5.

**Order**

5.1 In the premises set out herein above all appeals of assessee are allowed.

5.2 All Appeals of the assessee are allowed mutatis mutandis.

**Order pronounced in open court on 07.04.2025.**

Sd/-

(BHAGIRATH MAL BIYANI)  
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)  
JUDICIAL MEMBER

Indore

दिनांक /Dated : 07/04/2025

Dev/Sr. PS

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

By order

Senior Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore