

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.3293 & 3294/Chny/2024
निर्धारणवर्ष/Assessment Year: 2018-19 & 2020-21

St. Joseph's Educational Trust,
56-C, Old Mahabalipuram Road,
Sholinganallur,
Chennai-600 119.

v.

The DCIT,
Central Circle-1(3),
Chennai.

[PAN: AAMTS 3888 G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.3295 to 3297/Chny/2024
निर्धारणवर्ष/Assessment Year: 2018-19 to 2020-21

St. Joseph's Institute of Science &
Technology Trust,
56-C, Old Mahabalipuram Road,
Sholinganallur,
Chennai-600 119.

v.

The DCIT,
Central Circle-1(3),
Chennai.

[PAN: AAHTS 9943 B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

:

Mr. V. Balaji, CA &
Mr. K.R. Vasudevan,
Advocate by Virtual

प्रत्यर्थी की ओर से /Respondent by

:

Ms. Anitha, Addl.CIT

सुनवाईकीतारीख/Date of Hearing

:

04.04.2025

घोषणाकीतारीख /Date of Pronouncement

:

06.06.2025



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आदेश / ORDER

PER ABY T. VARKEY, JM:

The aforesaid appeals have been filed by two (2) assesseees' (i) St. Joseph's Educational Trust (hereinafter referred to as 'Educational Trust') & (ii) St. Josephs Institute of Science & Technology Trust (hereinafter referred to as 'Institute of S & T Trust') against the penalty levied u/s.270A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and u/s.271AAB of the Act. [ITA Nos.3293, 3295 & 3296/Chny/2024 are against the action of the Ld.CIT(A) confirming the penalty levied u/s.270A of the Act for AYs 2018-19 & 2019-20. And ITA Nos.3294 & 3297/Chny/2024 are against the action of the Ld.CIT(A) confirming the penalty levied u/s.271AAB for AY 2020-21].

2. At the outset, the Ld.AR of the assessee assailed the action of the Ld.CIT(A), by raising, inter-alia, legal issues, for appeals pertaining to AY 2018-19 & 2019-20, confirming the action of the AO levying penalty u/s.270A of the Act for underreporting of its income by levying 50% of the total tax by contending that no specific fault/charge has been framed against the assessee in the show cause notice (SCN) dated 29.09.2021 for AY 2018-19 [Educational Trust] and by notices dated 28.09.2021 for



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AY 2018-19 & AY 2019-20 in the case of 'Institute of S & T Trust' and therefore, the impugned notices were bad in law and therefore, invalid and consequent penalty needs to be cancelled, by relying on several case laws to support the ibid legal issue raised before us. Likewise, the Ld.AR has also raised legal issue against levy of penalty u/s.271AA(1A) of the Act for AY 2020-21 in both the Trust cases on similar grounds by pointing out that the SCN issued u/s.271AAB of the Act dated 29.09.2021 in the case of 'Educational Trust' and SCN dated 28.09.2021 in the case of 'Institute of S & T Trust' are bad in law and therefore, invalid and consequent penalty be cancelled by relying on the decision of jurisdictional Madras High Court in the case of Shri R. Elangoan v. PCIT in TCA No.770 & 771/2018 dated 30.03.2021.

3. At first, we will deal with the legal issue raised against the penalty levied u/s.270A of the Act for AY 2018-19 & AY 2019-20. Since the facts permeating in the three (3) appeals against the penalty levied u/s.270A of the Act, are identical/similar, we take up the appeal filed by the 'Educational Trust' for AY 2018-19 as the lead case and the decision of which will be followed *mutatis mutandis* in the case of 'Institute of S & T Trust' for both years.



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ITA No.3293/Chny/2024 for AY 2018-19 – which assail the penalty levied u/s.270A of the Act

4. Brief facts are that the assessee is a public charitable trust formed on 02.04.2012 and enjoyed section 12AA registration w.e.f. 29.05.2012 vide registration dated 26.12.2012. The assessee is noted to be running an Engineering College and has claimed exemption u/s.11 of the Act since its inception. In the year under consideration, i.e. AY 2018-19, the assessee is noted to have filed return of income (RoI) u/s.139(1) of the Act declaring gross receipts of Rs.43,78,72,937/- and 'Nil' taxable income and had shown in its books of accounts that it has received corpus donation of Rs.5,88,60,300/- by way of Demand Draft (DD) which RoI was processed u/s.143(1) of the Act and the same was accepted by the CPC by intimation dated 06.09.2019.

5. Pursuant to search in its premises on 07.11.2019, the assessee filed RoI manually on 23.09.2021 [since there were glitches in the portal couldn't uploaded electronically] wherein assessee treated the Corpus-Fund of Rs.5,88,60,300/- as voluntary donations since donors for best reasons known to them refused to give confirmation letters. Therefore, the assessee offered gross income of Rs.49,67,33,237/- in its RoI filed



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manually on 23.09.2021 and paid tax on it on 29.07.2020 viz., on the amount of shortfall in the application of funds to the extent of 85% of the income [including corpus donation which was treated as voluntary donations] received during the relevant previous year in accordance with section 11 of the Act. The AO is noted to have passed the assessment order u/s.153A r.w.s.144 on 29.09.2021 by accepting the income at Rs.49,67,33,237/- as returned by the assessee and determined the tax at Rs.3,79,31,260/-, wherein the assessment order, the AO endorsed his satisfaction to initiate separately penalty u/s.270A of the Act.

6. The AO thereafter is noted to have issued Show Cause Notice (SCN) dated 29.09.2021 u/s.274 r.w.s. 270 of the Act calling upon the assessee-Education-Trust 'as to why' penalty for underreporting/misreporting of income should not be imposed u/s.270A of the Act and the assessee objected to levy of penalty by pointing out, inter alia, that since the AO has accepted the returned income filed by the assessee pursuant to the notice u/s.153A of the Act and didn't make any addition to the income returned, the proposed penalty should be dropped. But the AO is noted to have rejected the plea and proceeded to consider the entire voluntary contribution admitted by the assessee to the tune of



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Rs.5,88,60,300/- as underreported income for the purpose of penalty u/s.270A of the Act.

7. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who was pleased to confirm the same.

8. Assailing the action of the Ld.CIT(A), the Ld.AR contended that a finding in the assessment proceedings that a particular receipt is income can't automatically be adopted to fasten penalty on the assessee. And according to him, during penalty proceedings, the AO should not begin with presumption that assessee is at fault; and further submitted that the AO should give proper hearing to the assessee before levy of penalty as mandated by section 274 of the Act, i.e., the AO was duty bound to give notice spelling out the specific fault/charge which he alleges the assessee had committed for imposition of penalty. Therefore, according to him, the assessee in the instant case has raised legal issue pointing out that the SCN issued by the AO u/s.274 r.w.s.270A of the Act dated 29.09.2021 [a copy of which is found placed at Page No.4 of the Volume-I] is bad in law since no specific charge/fault has been mentioned in the notice so that assessee could have laid its defense accordingly. And since the ibid notice was vague & ambiguous for mentioning both charges specified



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u/s.270A of the Act, the notice issued is vitiated and therefore, consequent penalty levied is unsustainable; and in order to buttress such a submission, drew our attention to the impugned penalty notice in the case of 'Educational Trust' for AY 2018-19 placed at Page No.4 of the Paper Book dated 29.09.2021, wherein, the AO is noted to have put the assessee on notice "*for underreporting/misreporting of income*". Drawing our attention to sec.270A of the Act, the Ld.AR explained that sec.270A of the Act, deals with penalty for two faults (i) 'underreporting of income' & (ii) 'underreporting as a consequence of misreporting of income'. According to the Ld.AR, sub-sections 1-7 of section 270A deals with 'underreporting of income' and sub-sections 8-10 deals with 'underreporting as a consequence of misreporting of income'. Thus, according to the Ld.AR, there are two (2) distinct faults/limbs in section 270A of the Act (i) 'underreporting of income' & (ii) 'underreporting as a consequence of misreporting of income' and that penalties for these faults are different, i.e. '50% is for underreporting of income' & '200% is for misreporting of income'. Therefore, according to the Ld.AR, while issuing SCN u/s.274 of the Act for levy of penalty u/s.270A of the Act, the AO was duty bound to put the assessee on notice as to what fault assessee



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has committed for which he was proposing levy of penalty u/s.270A of the Act. In the instant case, according to the Ld.AR, the AO ought to have put the assessee on notice for either 'underreporting of income' or for 'underreporting as a consequence of misreporting of income'. Instead, according to the Ld.AR, in the present case, the AO had issued notice for AY 2018-19 in the 'Educational Trust' case on 29.09.2021 for both the faults i.e. 'underreporting of income'/'misreporting of income', which is bad in law for non-application of mind and not specifying the charge, which makes the notice vague qua the assessee. Moreover, drawing our attention to the assessment order for AY 2018-19 in the case of 'Educational Trust', he pointed out that the AO has merely made endorsement that "*penalty proceedings u/s.270A of the Act is initiated separately*" without recording his satisfaction during the course of the assessment as to whether he is intending to proceed against the assessee for levy of penalty for 'underreporting of income' **or** 'misreporting of income' u/s.270A of the Act. Therefore, according to the Ld.AR, the SCN issued by the AO dated 29.09.2021 for AY 2018-19 in the case of 'Educational Trust' is bad in law.



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9. Likewise, he drew our attention to the case of 'Institute of S & T Trust' for AY 2018-19 wherein penalty notice issued u/s.270A of the Act dated 28.09.2021 is found placed at Page No.5 of the Paper Book wherein the AO has put the assessee on notice for fault 'underreporting of income'/ 'misreporting of income'. Likewise, he drew our attention to 'Institute of S & T Trust' for AY 2019-20 wherein the penalty notice has been issued by the AO u/s.270A of the Act dated 28.09.2021 found placed at Page No.5 of the Paper Book for AY 2019-20 wherein similar notice has been found to have been given.

10. Therefore, the Ld.AR submitted that SCN issued by the AO u/s.274 r.w.s.270A of the Act for AY 2018-19 & 2019-20 in both the cases of the assessee's are bad in law for not specifying in the impugned notices the specific charge/fault which the AO intends to put the assessee on notice for the proposed penalty u/s.270A of the Act i.e. whether the assessee was being proceeded against the either (i) under reporting of income or (ii) underreporting as a consequence of misreporting of income and also not for recording AO's satisfaction in the assessment order as to which fault/charge, assessee is being proceeded against for levy of penalty and



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referred to following case laws and therefore, prayed for quashing the same.

11. Per contra, the Ld.DR for the department has filed the written submissions, contents of which are reproduced as under:

ITA No.3293/Chny/2024 – the Ld.DR's written submissions

Written Submission on the Validity of Penalty Notice under Section 270A

1. Brief Facts

- A search under Section 132 of the Income Tax Act, 1961, was conducted on the assessee Trust on 07.11.2017.
- During the search, it was discovered that the assessee had collected capitation fees in cash, which were not accounted for in its books of accounts and were treated as corpus funds.
- For A.Y. 2018-19, the AO assessed this unaccounted income to tax and initiated penalty proceedings under Section 270A.
- In the penalty notice issued under Section 270A. the AO did not score out or explicitly specify whether the penalty was for "under-reporting" or "misreporting". However, the AO levied a penalty of 50% of the tax payable on the under-reported income, consistent with under-reporting
- The assessee has challenged the validity of the penalty notice before the Hon'ble ITAT, contending that the lack of specific mention of the limb renders the notice invalid.

2. Issue for Consideration

Whether the penalty notice under Section 270A is invalid due to the AO's failure to explicitly specify (by scoring out or mentioning) whether the penalty is for "under-reporting" or "misreporting", despite levying a 50% penalty.

3. Submission

It is respectfully submitted that the penalty notice is valid and the assessee's challenge lacks merit for the following reasons:

a. Penalty Rate of 50% Reflects Under-Reporting



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- Section 270A(7) prescribes a penalty of 50% of the tax payable on income under-reported under Section 270A(2), while Section 270A(8) imposes a 200% penalty for misreporting under Section 270A(3).
- The AD levied a 50% penalty, which unequivocally signal with under-reporting. Had the AO intended to penalize for misreporting (e.g., suppression of facts or falsification), the penalty would have been 200%. The quantum of penalty itself clarifies the limb under which it was imposed.
- The omission to score out "misreporting" is a procedural irregularity, not a substantive defect, and does not invalidate the notice.

b. Nature of Default Supports Under-Reporting

- Section 270A(2) defines under-reporting as income omitted from the return or not reported. The search on 07.11.2017 revealed unaccounted capitation fees not recorded in the books or disclosed in the return for A.Y. 2018-19, which constitutes under-reporting.
- Misreporting under Section 270A(3) requires deliberate acts like falsification of accounts or misrepresentation, which are not evident here. The AO's levy of 50% is consistent with the factual finding of omission rather than active concealment.

c. Section 292B Cures the Procedural Lapse

- Section 292B of the Income Tax Act provides that no notice shall be deemed invalid due to a mistake or omission if it is in substance and effect in conformity with the Act.
- The failure to score out "misreporting" or explicitly state "under-reporting" is a minor technical lapse. The 50% penalty, combined with the assessment of unaccounted income from the search, aligns with Section 270A(7), rendering the notice valid.
- The Bombay High Court in CIT v. Kaushalya [1995] 216 ITR 660 held that technical defects do not vitiate notices when the intent is clear.

d. No Prejudice Caused to the Assessee

- The assessee was fully aware of the penalty's basis: unaccounted capitation fees discovered during the 07.11.2017 search and assessed for A.Y. 2018-19.
- The notice, read with the assessment order and penalty order, provided sufficient opportunity to contest the charge. The 50% penalty rate clearly indicated under-reporting, and the assessee suffered no prejudice due to the lack of explicit mention.

e. Search Evidence Justifies Penalty



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- The search under Section 132 unearthed concrete evidence of unaccounted cash transactions misrepresented as corpus funds, taxable for A.Y. 2018-19. The AO's imposition of a 50% penalty reflects a lenient approach, as misreporting could have attracted 200%.

f. Holistic Interpretation of the Notice

- The notice must be read in conjunction with the assessment order, penalty order, and search proceedings. The 50% penalty rate and the context of unaccounted income clarify that the AO intended to penalize under-reporting.

g. Assessee's Conduct Warrants Penalty

- The assessee concealed capitation fees, failed to account for them, evading tax for A.Y. 2018-19. The 50% penalty is justified, and the challenge to the notice is a technical ploy to avoid liability.
- Invalidating the notice would undermine the deterrent purpose of Section 270A.

h. Judicial Precedents Supporting Revenue

- In Mak Data P. Ltd. v. CIT [2013] 358 ITR 593 (SC), the Supreme Court upheld penalties despite procedural lapses, as the assessee was aware of the allegations and participated in proceedings.

Burden on Assessee to Prove Misreporting

The assessee must show that the AO intended to penalize for misreporting (200%) but failed to establish it. Absent evidence of falsification or misrepresentation under Section 270A(3), the 50% penalty must be presumed to correctly apply to under-reporting.

4. Conclusion

The Revenue submits that **the penalty notice under Section 270A is valid. The 50% penalty aligns with under-reporting under Section 270A(7), and the failure to score out "misreporting" is a procedural lapse cured by Section 2928. The assessee suffered no prejudice, and the notice's intent is evident from the penalty rate and search findings on 07.11.2017.**

Hence it is humbly and respectfully requested that the Hon'ble ITAT to uphold the penalty and dismiss the assessee's challenge.

12. In his rejoinder, the Ld.AR countering the submission of Ld.DR submitted as under:



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Your appellant humbly wishes to submit the rejoinder to the counter submissions made by the department on 03-04-2025 as under:

The main issue in the appeal is with regard to the validity of the impugned penalty notice issued under section 270A of the Act dated 29-09-2021, which has been issued without mentioning the specific limb under which the penalty proceedings has been initiated, whether for "UNDER- REPORTING OF INCOME as defined under section 270A(2) r.w.s 270A(7)" or "MIS-REPORTING OF INCOME as defined under section 270A(2) r.w.s 270A(9), as these two limbs are distinct and different.

At the outset, it is submitted that the report of the Ld. DR has not addressed this issue of fact and has fairly conceded that the penalty notice has been issued without mentioning the specific limb under which assessee was charged. The report of the Ld. DR has also not addressed the issues raised in the submissions made by the appellant in the light of the various judicial decisions cited, including the decisions of the Jurisdictional High Court/Tribunal.

The Ld. DR has submitted that the penalty notice is valid on the following grounds:

a) Penalty rate of 50% reflects Under-Reporting

The Ld. DR has submitted that the quantum of penalty itself clarifies that the limb under which the penalty was imposed. Since the Ld.AO has levied penalty @ 50%, it indicates that the proceedings have been initiated for "Under-reporting of income".

Our Submission

The Ld. DR has failed to appreciate that the issue is whether the Ld. AO was required to indicate the limb of the section specifying the charge, while initiating the penalty proceedings and issuing the notice under section 270A of the Act dated 29-09-2021.

In fact, the submission of the Ld. DR supports the appellant's contention that the impugned penalty notice was vague and it was only from the penalty order the Ld.AO has informed the appellant the limb under which the penalty has been imposed.

The appellant has submitted various case laws, wherein it has held that if penalty notice is vague, it vitiates the penalty proceedings:

- Hon'ble Madras High Court in the case of BabujiJacob v. ITO [2021] 430 ITR 259 (Mad)
- Hon'ble Karnataka High Court in the case of CIT v. Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565 (Kar); and CIT v. SSA's Emerald Meadows [2016] 73 taxmann.com 241 (Kar).
- Hon'ble Delhi High Court (Del) in the case of *Prem Brothers Infrastructure LLP v. NFAC* [2022] 142 taxmann.com 38
- *Hon'ble ITAT - Chennai - ShriMelekandyPuthalathFarookVs ACIT - ITA No. 1890/CHNY/2024 dated 05-11-2024*
- *Hon'ble ITAT - Chennai - Enrica Enterprises P. Ltd. Vs. DCIT* [2024] 163 taxmann.com 105
- *Hon'ble ITAT- Delhi - Jaina Marketing & Associates Vs DCIT* [2024] 162 taxmann.com 439 (Delhi - Trib.)



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Following the Hon'ble SC decision in the case of CIT Vs SSA Emerald Meadows [2016] 73 taxmann.com 241 (SC)

Hence, it is settled issue, upheld in several judicial decisions, that the AO is required to indicate the limb of the charge, while initiating the penalty proceedings and failure to do so vitiate the penalty proceedings and renders the penalty order invalid.

b) Nature of Default Supports Under-Reporting

Our Submission

The Ld. DR failed to appreciate again whether the nature of alleged default of the appellant is mentioned in the impugned penalty notice issued, as interpreted by the Hon'ble Supreme Court, various High Courts and the Benches of the Hon'ble ITAT. It is settled issue, upheld in several judicial decisions, that the AO is required to indicate the limb of the charge, while initiating the penalty proceedings and failure to do so vitiate the penalty proceedings and renders the penalty order invalid.

c) Section 292B Cures the procedural lapse

The Ld. DR has submitted that the omission of mentioning the specific limb of charge in the impugned penalty is a curable defect, under section 292B of the Act and the impugned penalty notice shall not be regarded as invalid.

Our Submission

As held by the Hon'ble Supreme Court, various High Courts and the Benches of the Hon'ble ITAT in several decisions, mentioning of the specific limb which specifying the charge in the penalty notice is **"sine-qua-non for levy of penalty"**. Hence, if the penalty notice is vague and not specific, it is a "Jurisdictional defect", which goes to the root of the matter, which cannot be cured by section 292B of the Act.

For this proposition, we place our reliance on the jurisdictional decisions of the Hon'ble ITAT

In the case of PVP Ventures Ltd Vs DCIT dated 08-06-2022 in ITA No.778/Chny/2019, wherein it has been held as under:

"6.....Framing of specific charges is sine-qua-non for levy of penalty since the assessee must be put to allegations for which the penalty was being levied. In the absence of such a specific charge, the penalty would be bad-in-law and the same is not a curable defect u/s 292BB. This position has been settled in numerous binding judicial precedents."

which has been followed by the Hon'ble Jurisdictional Benches of the ITAT in the cases of



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- **Sri Maharani Finance Corporation Vs DCIT in ITA No.1264/Chny/2023 dated 03-06-2024** and
- **Dakshinamoorthy Kumaresan Vs ITO in ITA No.2452/Chny/2024 dated 17-12-2024**

Although those decisions were rendered in the context of section 271(1)(c) of the Act, the same principle would equally apply to Section 270A of the Act

d) No prejudice Caused to the assessee

The Ld.DR submitted that prejudice has been caused to the assessee, as the assessee was given opportunity of being heard.

Our Submission

When the impugned penalty notice is invalid, the entire proceedings gets vitiated and the question of giving opportunity of being heard or whether prejudice is caused or not are of no significance. **Further, such invalid notice would cause prejudice to the assessee.** For this proposition, we place our reliance on the **Full Bench Decision** of the **Hon'ble Bombay High Court** decision in the case of **Mohd. Farhan A. Shaikh Vs DCIT [2021]434 ITR 1 (Bom) (FB)**, which held as under-

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

e) Search Evidence justifies Penalty

The Ld. DR submitted that the under the search done u/s 132 of the Act, unearthed unaccounted cash transactions, which warrants penalty and the Ld.AO has taken an lenient approach of levying 50% instead of 200%.

f) Holistic Interpretation of the Notice

The Ld. DR submitted that the notice must be read in conjunction with the assessment order, penalty order and search proceedings.



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g) Assessee's Conduct Warrants Penalty

The Ld. DR submitted that the appellant has concealed the income, hence, the Ld.AO is justified in levying penalty

Our Submissions

Again, the Ld. DR is jumping the gun by justifying the action of the Ld.AO by passing the penalty order levying penalty of 50% of under-reporting of income. The issue is not whether the action of the assessee, evidence gathered during search justifies or warrants levying of penalty or not.

There is a no provision under the Act, which specifies that the penalty notice must be read in conjunction with assessment order and penalty order and there is no jurisprudence relied upon by the Ld.DR for such a proposition. Rather, there are several decisions, wherein it has held that penalty is independent of the assessment proceedings and a valid penalty notice is a "sine qua non for levying penalty".

The Ld. DR has failed to answer the question raised by the Hon'ble Bench, whether the Ld.AO has issued a valid penalty notice to assume jurisdiction to initiate the penalty proceedings, in the light of the various judicial precedents cited by the appellant that if the penalty notice is vague, then penalty proceedings gets vitiated.

h) Judicial Precedence- SC decision in the case of Mak Data P. Ltd Vs (2013) 358 ITR 593 (SC)

The Ld. DR has relied on the Hon'ble SC decision in the case of Mak Data P. Ltd Vs (2013) 358 ITR 593 (SC) for the proposition the penalty could be levied despite procedural lapses, as the assessee has participated in the proceedings and was aware of the allegations.

Our Submission

The Hon'ble SC decision relied by the Ld.DR is wholly distinguishable on facts and law. In that case, the question was whether the assessee would be absolved from penalty, if he has voluntarily disclosed his income. It is not a case, where the penalty notice issued by the Ld.AO is valid or not.

Hence, the reliance of the abovementioned SC decision by the Ld.DR is totally misplaced, as it is distinguishable both on facts and law.

i) Burden on Assessee to Prove Misreporting

The Ld. DR submitted that the burden is on the appellant to prove that the Ld.AO intended to levy penalty for misreporting @ 200% but the appellant failed to establish it. Hence the Ld.AO is justified in levying penalty @ 50%



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Our Submission

The question of burden of proof would arise, only if the proceedings are validly initiated and the Ld.AO has assumed proper jurisdiction and issued a proper show-cause notice. In the absent of any valid proceedings, the question of discharging the burden of proof by the appellants does not arise.

In view of the above decisions, we humbly submit before Your Honours that the impugned penalty order is liable to be quashed.

13. We have heard both the parties on the legal issue and perused the records. The assessee has assailed the levy of penalty u/s.270A of the Act for AY 2018-19 & 2019-20 [three appeals], inter alia, on the ground that (i) the AO while passing the assessment order has merely referred to initiation of penalty proceedings u/s.270A of the Act without specifying the charge/limb u/s.270A of the Act, which he is satisfied in the course of assessment proceedings, the assessee has committed to impose penalty u/s.270A of the Act; and (ii) that the AO continued with the lapse by issuing notice of penalty without specifying the exact nature of fault committed by the assessee u/s.270A of the Act i.e. the SCN issued by the AO against the assessee u/s.274 r.w.s.270A of the Act dated 29.09.2021 [for 'Educational Trust' for AY 2018-19 & in the case of 'Institute of S & T Trust' SCN dated 28.09.2021 for AY 2018-19 and notice dated 28.09.2021 for AY 2019-20] are bad in law since no specific charge/fault has been spelled out in the impugned notices which according to the



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assessee has vitiated the entire penalty proceedings and therefore, consequent levy of penalty u/s.270A is bad in law. At this juncture, it is important to bear in mind that finding in the assessment proceedings that a particular receipt is income can't automatically be adopted to fasten penalty on the assessee. During penalty proceedings, the AO should not begin with presumption that assessee is at fault, even if the assessee doesn't agitate the addition/disallowance made in assessment order, and remember that neither imposition of penalty is automatic nor it is mandatory, it is the discretion of the AO to levy penalty. According to us, the finding given in the assessment proceedings for determining the tax, is good evidence for the AO to record his satisfaction in the course of assessment proceedings to initiate penalty proceedings against the assessee. But before penalty can be validly imposed, the procedural safeguard u/s.274 of the Act needs to be scrupulously adhered to. Procedural safeguard ensures compliance with the principles of natural justice, giving the notice an opportunity to respond & explain why penalty should not be levied upon him. Therefore, issuing proper/legally valid notice to the assessee as stipulated u/s.274 of the Act is *sine qua non* for valid imposition of penalty. According to the assessee, when the



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impugned notice of penalty issued by the AO is vague, [*i.e. it doesn't spell out the specific fault for which the assessee has been called upon to defend the proposed penalty viz., 'underreporting of income'/'misreporting of income'*] it is bad in law. According to us, an omnibus SCN, betrays application of mind and vitiates the issuance of such penalty notices, because, its purpose of putting the assessee on proper notice is lost. An omnibus SCN obviously confuses the assessee and he will not be able to defend the fault/charge which would be ultimately imposed upon him. Therefore, the Hon'ble Courts have held that if the notices are found to be vague, it has to be held as bad in law. Now let us examine the impugned notice, the AO had issued proposing penalty u/s.270A of the Act which we note to be either for 'underreporting of income' or for 'misreporting of income'. In other words, it doesn't specify which fault the AO is proposing the assessee to defend against levy of penalty. A perusal of the impugned notice (infra) doesn't reveal whether the AO has initiated penalty for under-reporting of income as per sub-section (1) to (7) of section 270A of the Act or misreporting of income as per section (8) to (9) of section 270A of the Act. It is noted that these are distinct faults with different consequences. Therefore,



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according to us, the AO was duty bound to put the assessee on proper notice as to what charge/fault, the assessee is supposed to defend against the proposed penalty. Instead, when the assessee is put to notice for both the charges/fault as discernable from the impugned notices, the assessee couldn't be expected to defend the omnibus faults and resultantly, the assessee would be unfairly treated and the fair hearing guaranteed u/s.274 of the Act would stand defeated. As noted, the assessee won't be able to validly defend the omnibus charges; and absence of proper charge vitiates the penalty notices. In the instant case, the AO could have proposed to levy penalty for 'underreporting of income' which fault falls under sub-sections 1-7 of section 270A of the Act or for misreporting of income and certainly not for levy of penalty for both for the faults. For easy reference, we reproduce the fault/charge against the assessee as given in the impugned SCN for both the years against both the assessees which are similarly worded and one of the same for AY 2018-19 in the lead case of 'Educational Trust' is reproduced as under:

Whereas in the course of proceedings before me for the Assessment Year 2018-19, it appears to me Under-reporting / misreporting of income

You are hereby requested to appear before me either personally or through a duly authorized representative at 11:00 AM on 13/10/2021 and show cause why an order imposing a penalty on you should not be made under section 270A of the Income Tax Act, 1961.



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If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 270A of the Income Tax Act, 1961.

14. In the light of the discussion (supra), we find considerable merit in the legal issue and find that the impugned notices doesn't spell out the specific faults for which the assessee has been called upon to defend against the proposed penalty because both the faults as specified u/s.270A of the Act has been stated therein i.e. 'underreporting of income'/'misreporting of income'. Hence, the Ld.AR rightly submitted that since these are two distinct faults specified there under with different consequences, proper notices specifying the charge/fault is a must, to facilitate the assessee to meet the charge alleged against him. Failing which, the assessee would not be able to properly defend an ambiguous charge, which would vitiate assessee's right to a fair hearing guaranteed by the Constitution of India.

15. Further to our discussion (supra) section 270A of the Act specifies two charges/faults i.e. (i) is 'underreporting of income' & (ii) is 'underreporting as a consequence of misreporting of income'. Sub-sections 1-7 of section 270A deals with 'underreporting of income' whereas sub-sections 8-10 deals with 'underreporting as a consequence



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of misreporting of income'. For underreporting of income, penalty levied u/s.270A of the Act is sum equal to 50% of the amount of tax payable on the 'underreported income' whereas for 'misreporting of income', it shall be equal to 200% of the amount taxable on the 'underreported income'. Therefore, we find that as per the scheme of sec.270A of the Act itself it shows that there are two distinct faults/lapses for which different consequences/penalty is levied. Therefore, the AO was duty bound to put the assessee on notice as to which charge/lapse/fault which is alleged against him, so that assessee can defend it in accordance to law. According to us, the assessee should have been informed in the SCN with certainty and accurately of the exact nature of the fault alleged against it, which is absent in this case. Therefore, SCN proposing penalty are found to be vague and doesn't satisfy the requirement of law and therefore, consequent levy of penalty is fragile in the eyes of law and is held to be *ab initio void*. Thus, assessee's appeal for AY 2018-19 & AY 2019-20 are allowed i.e. ITA Nos.3293, 3295 & 3296/Chny/2024 and the penalty imposed for these three (3) appeals are directed to be deleted.



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ITA Nos.3294 & 3297/2024 for AY 2020-21 which assails the penalty levied u/s.271AAB of the Act:

16. Since the facts are same, we will take up the appeal preferred by the 'Educational Trust' [ITA No.3294/Chny/2024] as lead case and result of which will be followed in the case of other assessee ['Institute of S & T Trust'] for AY 2020-21.

17. Brief facts are that the assessee is noted to be a public Charitable Trust enjoying registration w.e.f. 29.05.2012 u/s.12AA of the Act and pursuant to a search conducted in its premises on 07.11.2019, assessee-Trust agreed to treat the corpus donation of Rs.24 lakhs as voluntary contribution since it couldn't furnish the confirmation letter from the donors and then filed the RoI for the searched AY 2020-21 on 05.01.2021 declaring gross-receipts of Rs.49,40,58,348/- [including voluntary contribution of Rs.24 lakhs] and income of Rs.78,75,000/- representing anonymous donation u/s.115BBC of the Act. The AO assessed the gross receipts of the assessee at Rs.50,67,33,348/- by framing the assessment order u/s.143(3) r.w.s.153B(1)(b) dated 29.09.2021 by making an addition of (i) unaccounted capitation fees/donation amounting to Rs.1,02,75,000/- and (ii) addition of voluntary contribution amounting to



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Rs.24 lakhs [which according to the assessee tantamounted to double taxation which was already included in the gross receipt shown by the assessee to the tune of Rs.49,40,58,348/-] and the AO assessed the taxable income at Rs.74,81,750/- i.e. income to be taxed u/s.115BBC of the Act and consequently, determined tax payable at Rs.69,45,928/-. The assessee is noted to have filed rectification application on 28.01.2022 against the assessment order dated 29.09.2021 which according to the Ld.AR has not been disposed off till date, which is pending for rectification before the AO.

18. And the AO meanwhile initiated the penalty proceedings by issuing notice u/s.271AAB(1) dated 28.09.2021 for AY 2020-21 which was objected to by the assessee on many issues. But the AO is noted to have proceeded to consider the gross amount of Rs.1,02,75,000/- [Rs.24 lakhs **plus** Rs.78,75,000/-] as undisclosed income for the purpose of penalty levied u/s.271AAB of the Act and levied penalty of Rs.76,05,000/- being 60% taxes payable on the undisclosed income u/s.271AAB of the Act by order dated 30.03.2022 which has been confirmed by the Ld.CIT(A). Aggrieved by the action of the Ld.CIT(A), the assessee is before us.



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19. The Ld.AR assailed the impugned action of the Ld.CIT(A), inter-alia, confirming the action of the AO which according to the Ld.AR is erroneous and pointed out that the penalty levied is bad in law on many grounds (infra), and especially on the ground that the SCN issued by the AO u/s.274 r.w.s.271AAB of the Act dated 28.09.2021 is bad in law and filed the written submissions which is reproduced as under:

Ground of Appeal 2 - PENALTY ORDER IS LIABLE TO BE QUASHED AS THE UNDERLYING NOTICE IS INVALID.

The penalty order passed by the Ld. AO on 30-03-2022 based on the invalid notice initiating the penalty proceedings u/s 274 r.w.s. 271AAB(1) of the Act dated 29-09-2021 is void and hence, liable to be quashed.

A. Provisions of the Act:

2.2. Chapter XXI of the Act deals with levy of penalty. Section 271AAB of the Act, levies penalty on the assessee where search has been initiated. The extract of Section 271AAB(1) of the Act is as follows:

271AAB. (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 but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, -

(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 subsection (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



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(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).

2.3. Section 274 of the Act deals with the procedure to be followed before imposing penalty under Chapter XXI, which reads as under:

"Procedure.

274. (1) 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.

B. No specific mention of grounds on which penalty is initiated:

At this juncture, we humbly submit that the penalty order is liable to be quashed as it is completely infructuous for the following reasons:

2.4. As specified in the provisions of Section 271AAB(1) of the Act, the penalty section has three limbs each having a different ground of levy of penalty and a different rate of penalty respectively. In the notice initiating penalty dated 29-09-2021, the Ld. AO, without categorically recording the satisfaction as to, for what limb of levy of penalty u/s 271AAB(1) [whether (a)/(b)/(c)] the subject penalty proceedings has been initiated, has contravened the provisions of Section 271AAB r.w.s. 274 of the Act. Such distinction is very crucial to be mentioned in the notice since each ground carries different penalty rates. Hence, the assessee ought to have been informed about the probable result/consequence of penalty proceedings being conducted. Only then it can be deemed that reasonable opportunity of being heard has been given to the appellant before imposing penalty as per Section 274(1) of the Act.



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Hence the notice is an invalid notice and as such an order (dated 30.03.2022) passed based on an invalid notice is void-ab-initio.

In this regard, we wish to rely on the following judicial precedents:

1) R. P. Wood Products Private Limited, Naya Bazar, Ajmer VS. DCIT Central Circle, Ajmer - Hon'ble ITAT, Jaipur

He also submitted that satisfaction for levy of penalty has to be recorded at the time of initiation of the penalty and not at the time of levying of penalty. The Id. AR of the assessee also submitted that the Id. AO has not specified the limb under which the penalty can be levied.

Based on above the Tribunal held that there is no case for imposing penalty u/s 271AAB of the Act.

Other relevant rulings in the same lines:

1. Chandra Suresh Kothari vs. DCIT - Hon'ble ITAT, Nagpur
2. Padam Chand Punliya vs. ACIT, Central circle, Jaipur - Hon'ble ITAT, Jaipur
3. Smt. Aparna Agrawal vs. DCIT, Central circle, Kota - Hon'ble ITAT, Jaipur

Ground of appeal #3: PENALTY ORDER IS LIABLE TO BE QUASHED AS THE UNDERLYING NOTICE IS INVALID.

The penalty order passed u/s 271AAB(1A) of the Act is liable to be quashed as no notice has been issued u/s 274 r.w.s. 271AAB(1A) of the Act.

2.5 Section 271AAB(1A) of the Act spells out that:

(1A) 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 date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,-

(a) a sum computed at the rate of thirty per cent of the undisclosed income of the specified previous year, if the 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-



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(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 sixty per cent of the undisclosed income of the specified previous year, if it is not covered under the provisions of clause (a).

2.6 In the penalty order dated 30.03.2022, the Ld. AO has levied penalty of INR 76,05,000/- being 60% of the undisclosed income in lines with the provisions of Section 271AAB(1A). But no notice has been issued for levy of penalty under Section 271AAB(1A). Hence the penalty order is prima facie invalid as no proper notice was served in that regard and is liable to be quashed.

In this regard we rely on the following judgments which was rendered in the context of Section 270A of the Act but can very well be applied in the case of 271AAB of the Act:

i) Hon'ble Delhi ITAT in the case of Jaina Marketing & Associates vs. DCIT, Delhi

In fact, two notices were issued by the Assessing Officer and in both the notices, the Assessing Officer had only directed the assessee to reply with regard to 'under reporting of income. But the penalty had been levied ultimately for both 'under reporting' and 'misreporting of income' at the rate of 200% in terms of section 270A(9) for which show cause notice was never issued to the assessee. Hence, the Assessing Officer is directed to delete the penalty levied under section 270A.

ii) Hon'ble Chennai ITAT in the case of Enrica Enterprises (P.) Ltd vs. DCIT, Chennai

It is undisputedly clear that satisfaction of the AO should be discernable from the show cause notice issued by the AO under section 274 r.w.s.270A. In absence of any particular charge for which, the assessee is directed to pay penalty under section 270A, entire penalty proceedings become invalid and liable to be quashed. In this view of the matter, the show cause notice issued by the AO under section 274 r.w.s.270A is vague, non-specific to charge and thus, is illegal and liable to be quashed. Thus, the order passed by the AO imposing penalty under section 270A(9) is quashed.

Ground of appeal #4: PENALTY LEVIABLE UNDER SECTION 271AAB IS OPTIONAL AND NOT MANDATORY

The Ld. AO erred in levying penalty u/s 271AAB of the Act vide order dated 30-03-2022 without considering the appellants submission that the levy of penalty under Section 271AAB of the Act is discretionary and not mandatory in nature.



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2.7 It is brought to attention that the levy of penalty under Section 271AAB is discretionary and not mandatory in nature on account of the use of words "may" in the opening phrase of the penalty section. In this regard we would like to rely upon the following judicial decisions:

1) Hon'ble Jaipur ITAT - R. P. Wood Products Private Limited, Naya Bazar, Ajmer Vs. DCIT Central Circle, Ajmer

Now, coming to another contention of the Id AR where he has challenged the findings of the Id. CIT(A) that penalty u/s 271AAB is mandatory in nature and there is no discretion with the Income tax authorities. It was submitted by the Id AR that in section 271AAB, the word 'may' is used instead of 'shall' so it is not mandatory but same is discretionary. It was submitted that it is settled position of law that penalties are not compulsory, not mandatory but are also discretionary considering the overall facts and circumstances of the case.

2) Hon'ble Andhra Pradesh High Court PCIT, Visakhapatnam Vs. M/S Sri Radha Krishna Vihar, Kakinada

From the plain reading of the Section 158 BFA(2), it does not appear that in all the cases where the undisclosed income is determined by the AO under Clause(c) of Section 158BC, the imposition of penalty as specified u/S.158BFA shall follow as a natural consequence thereof. In our considered opinion, in terms of Section 158BFA, a discretion is vested with the Assessing Officer to levy the penalty in respect of the undisclosed income but it cannot be inferred from the said provision that the liability for penalty is automatic. Of course, the proviso to Section 158BFA(2) enumerates the circumstances wherein no penalty is leviable but from that also it cannot be inferred that the absence of the circumstances enumerated will attract the provision of penalty automatically.

Ground of appeal #5 & #6: NO UNDISCLOSED INCOME IN THE CASE OF THE APPELLANT

1. The Ld. AO erred in levying penalty u/s 271AAB of the Act where there is no undisclosed income in the case of the appellant.

2. The Ld. AO erred in concluding that the appellant is found to have undisclosed income without taking cognizance of the fact that the appellant has duly recorded its income found in the course of search operations and had offered the same in the ROI filed for the subject AY 2020-21.

2.8 Section 271AAB of the Act considers a person to have undisclosed income in the following cases:

"undisclosed income" means-

(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-



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(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.

2.9 In this regard we would like to bring to your kind attention the fact that the addition of Rs. 1,02,75,000/- on the grounds of being undisclosed income is not correct due to following reasons:

i) The corpus donation of Rs. 24,00,000/- which was received by way of demand draft was clearly recorded in the books of accounts of the appellant

ii) The amount of Rs. 78,75,000/- which was received in cash was recorded in an excel sheet which forms part of the books of accounts maintained by the appellant in the normal course of business.

Additionally in respect of (ii) above, it is clarified that the provisions of Section 271AAB will not get attracted if the income has been recorded in "Other documents". So even if a contention is taken that the excel sheet does not form part of books maintained in the normal course of business, it still forms part of other documents maintained by the appellant in the normal course of business and hence does not amount to undisclosed income.

In this regard, we would like to draw attention to the judgment in the case of DCIT, Kolkata Vs. Manish Agarwala -Hon'ble ITAT Kolkata

We note that since the income under question (Rs. 3 cr.) was in fact entered in the "other documents" maintained in the normal course relating to the AY 2013-14, which document was retrieved during search, hence, the amount of Rs. 3 cr. offered by the assessee does not fall in the ken of "undisclosed income" defined in Sec. 271AAB of the Act.

Further, it should be noted that the amount of Rs. 24,00,000/- had been disclosed as voluntary contributions and Rs. 78,75,000/- had been disclosed as anonymous donations in the return filed dated 15.01.2021 which at the time is a duly filed return of income as the time limit for filing the return of income for the relevant AY 20-21 had not expired.

Hence, there is no undisclosed income for the relevant AY 2020-21.

Ground of appeal #7, #8 & #9: ERRONEOUS COMPUTATION OF UNDISCLOSED INCOME



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1. Without prejudice to the above grounds of appeal, the Ld. AO erred in computing undisclosed income as INR 1,26,75,000/- blindly relying on the assessment order dated 29-09-2021, without considering the rectification petition filed u/s 154 of the Act by the appellant towards rectification of mistakes apparent from the order.

2. The Ld. AO erred in computing undisclosed income as assessed vide the search assessment order u/s 153A of the Act dated 29-09-2021, without giving effect to the application of income as claimed u/s 11 of the Act.

3. Without prejudice to the above grounds of appeal, the Ld. AO erred in levying penalty on the voluntary donations of INR 24,00,000/- duly recorded in the books of accounts and offered to tax in the Return of Income filed by the appellant.

2.10 A) The total income received by the appellant is Rs. 1,02,75,000/- which have been duly recorded in the books and disclosed in the return of income filed on 15.01.2021. But the Learned AO has erroneously added a sum of INR 24,00,000/- as part of the total additions of INR 1,26,75,000/- as undisclosed income based on the order dated 29-09-2021. This sum of INR 24,00,000/- is already a part of the income offered of INR 1,02,75,000/-.

A rectification petition in this regard has been filed on 12-04-2022 but the same has been ignored while passing the penalty order dated 30-03-2022. This amounts to double taxation of the same income.

B) Furthermore, the Learned AO has made additions of INR 1,26,75,000/- without giving effect to the application of income in accordance with the provisions of Section 11 of the Income Tax Act, 1961 in respect of the voluntary contributions of INR 24,00,000/- which the appellant is duly entitled to.

Ground of appeal #10: INCORRECT RATE OF PENALTY LEVY

Without prejudice to the above grounds, The Ld. AO erred by computing the penalty at the rate of 60 percent instead of 30 percent though your appellant has satisfied the entire conditions listed under clause (a) of Section 271AAB(1A) of the Act.

2.11 As per the provisions of Section 271AAB(1A):

(1A) 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 date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, -

(a) a sum computed at the rate of thirty per cent of the undisclosed income of the specified previous year, if the assessee-



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(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 sixty per cent of the undisclosed income of the specified previous year, if it is not covered under the provisions of clause (a).

2.12 In this regard and without prejudice to the other arguments placed above, it is noted that the Learned AO has erroneously levied a penalty at the rate of 60% instead of 30% on the income added as undisclosed income. The said amount has been duly disclosed in the return of income dated 15.01.2021. Proper substantiation for the same has also been appropriately given. Hence the said case will fall under clause (a) of Section 271AAB(1A) attracting a penalty of only 30% of the undisclosed income.

Ground of appeal #11 & #12: OTHERS

1. Your appellant craves the indulgence of the Hon'ble Commissioner of Income Tax (Appeals) to add/ alter and supplement the grounds of appeal as well as file additional grounds of appeal to support the case of the appellant.

2. For these and such other grounds that may be adduced at the time of hearing, it is prayed that the order of the assessing officer be modified accordingly.

2.13 The appellant does not wish to stress further on this ground.

III. PRAYER

3.1 Considering the facts and submissions made above, it is humbly requested that the underlying notice initiating the penalty proceedings is itself void ab initio and hence, is liable to be quashed on the following grounds:

i) There are no undisclosed income by the appellant as the entire amount which is the basis for the penalty levied has been appropriately recorded in the books of accounts and disclosed in the return of income for the relevant AY.

ii) The learned AO has not made any reference to the specific limb under Section 271AAB(1) under which penalty is leviable.



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iii) The Learned AO has levied penalty under Section 271AAB(1A) in his penalty order without issuing any notice for levying such penalty.

3.2 Further, even if your Honour confirm the penalty, it is hereby reiterated that there is no 'undisclosed' income since the assessee has provided bona-fide explanation and also offered the same vide the ROI filed u/s 139(4A) of the Act. Without prejudice to the above, in case of decision to levy penalty the following errors are to be taken into consideration and rectified:

i) The amount of Rs. 24,00,000/- has been added twice while computing the undisclosed income

ii) Penalty has been levied at the rate to 60% instead of the applicable 30%

3.3 It is also submitted that there is no malafide intention on the part of the appellant to conceal any income.

3.4 Considering the above, your Honour is requested to delete the penalty imposed by the Ld. AO for the subject AY 2020-21.

20. Per contra, the Ld.DR supporting the legal action of the AO issuing the SCN submitted as under:

ITA No.3294/Chny/2024 – the Ld.DR's written submissions

Written Submission on the Validity of Penalty Notice under Section 271AAB

1. Brief Facts

- A search under Section 132 of the Income Tax Act, 1961, was conducted on the assessee Trust on 07.11.2017.
- During the search, it was discovered that the assessee had collected unaccounted capitation fees in cash, which were not recorded in its books of accounts.
- For A.Y. 2020-21, the AO assessed this undisclosed income and initiated penalty proceedings under Section 271AAB.
- The penalty notice cited "Section 271AAB(1)" instead of "Section 271AAB(1A)", but the AO imposed a penalty of 60% on the undisclosed income, consistent with Section 271AAB(1A)(b).
- The assessee has challenged the validity of the penalty notice before the Hon'ble ITAT, arguing that the incorrect reference to the section renders it invalid.



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2. Issue for Consideration

Whether the penalty notice under Section 271AAB is invalid due to the AO's reference to "Section 271AAB(1)" instead of "Section 271AAB(1A)", despite the levy of a 60% penalty.

3. Submission

It is respectfully submitted that the penalty notice is valid and the assessee's challenge lacks merit for the following reasons:

a. Penalty rate of 60% along with section 271AAB(1A)

- Section 271AAB(1A) applies to searches initiated on or after 15.12.2016. It prescribes a penalty of 60% of undisclosed income under Section 271AAB(1A)(b) if the assessee fails to admit the income during the search, pay tax, and include it in the return.
- The search in this case occurred on 07.11.2017, which is after 15.12.2016, and the AD levied a 60% penalty, clearly aligning with Section 271AAB(1A)(b).
- The reference to "Section 271AAB(1)" in the notice is a clerical error. Section 271AAB(1) applies to searches before 15.12.2016 and imposes penalties of 10%-30%. which does not match the 60% penalty levied here. The AO's intent to invoke Section 271AAB(1A) is evident from the penalty rate.

b. Section 292B Cures the Defect

- Section 292B of the Income Tax Act states that no notice shall be deemed invalid due to a mistake or defect if it is in substance and effect in conformity with the Act.
- The incorrect citation of "271AAB(1)" instead of "271AAB(1A)" is a minor technical error. The notice's substance imposing a 60% penalty for undisclosed income from a search after 15.12.2016-complies with Section 271AAB(1A).
- The Bombay High Court in CIT v. Kaushalya [1995] 216 ITR 660 held that technical defects do not invalidate notices when the intent and purpose are clear.

c. No Prejudice Caused to the Assessee

- The assessee was fully aware of the basis for the penalty: undisclosed capitation fees unearthed during the 07.11.2017 search and assessed for A.Y. 2020-21.
- The notice, when read with the assessment and penalty orders, clearly indicates that the penalty was imposed at 60% under Section 271AAB(1A).



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d. Search Context and Legislative Intent

- Section 271AAB was introduced to penalize undisclosed income discovered during searches. The assessee concealed capitation fees, failed to disclose them, and did not meet the conditions for a reduced penalty under Section 271AAB(1A)(a).
- The 60% penalty under Section 271AAB(1A)(b) is appropriate. Invalidating the notice on a technicality would defeat the legislative intent to deter tax evasion in search cases.

e. Holistic Interpretation of the Notice

- The notice should be interpreted alongside the assessment order, penalty order, and search proceedings. The reference to "271AAB(1)" is an inadvertent error, but the 60% penalty rate and factual context confirm the applicability of Section 271AAB(1A).

f. Assessee's Conduct Warrants Penalty

- The assessee collected unaccounted cash, and evaded tax. The search provided clear evidence of undisclosed income for A.Y. 2020-21.
- The 60% penalty is justified, and the assessee's challenge appears to be an attempt to avoid liability despite evident tax evasion.

g. Judicial Precedents Upholding Revenue's Position

- In *Mak Data P. Ltd. v. CIT* [2013] 358 ITR 593 (SC), the Supreme Court upheld penalties despite procedural irregularities, as the assessee was aware of the charges.

h. Burden on Assessee to Prove Invalidity

- The assessee must prove that the incorrect reference caused genuine confusion or prejudice. Given the 60% penalty rate and search context, no such misunderstanding could reasonably have arisen.

4. Conclusion

It is humbly submitted that the penalty notice under Section 271AAB is valid. The 60% penalty aligns with Section 271AAB(1A)(b), and the incorrect reference to "271AAB(1)" **is a clerical error rectified by Section 2928. The assessee suffered no prejudice, and the notice's intent is clear from the penalty rate and search findings.** The Hon'ble ITAT is respectfully requested to uphold the penalty and dismiss the assessee's challenge.

Hence it is humbly and respectfully requested that the Hon'ble ITAT to uphold the penalty and dismiss the assessee's challenge.



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21. The Ld.AR has filed his rejoinder to the written submissions of the Ld.DR, which is reproduced as under:

Rejoinder to the counter filed by the Department

Your appellant humbly wishes to submit the rejoinder to the counter submissions made by the department on 03-04-2025 as under:

The main issue in the appeal is with regard to the validity of the impugned penalty notice issued under section 271AAB(1) of the Act dated 29-09-2021, which has been issued for the search initiated on 07-11-2019, instead of section 271AAB(1A) of the Act and also without mentioning the specific limb under which the penalty proceedings has been initiated.

At the outset, it is submitted that the report of the Ld. DR has not addressed this issue of fact and has fairly conceded that the penalty notice has been issued without mentioning the specific limb under of charge. The report of the Ld. DR has also not addressed the issues raised in the submissions made by the appellant in the light of the various judicial decisions cited, including the decisions of the Jurisdictional High Court/ Tribunal.

The Ld. DR has submitted that the penalty notice is valid on the following grounds:

a) Penalty rate of 60% aligns with 271AAB(1A)(b)

The Ld. DR has submitted that the quantum of penalty itself clarifies that the section and the limb under which the penalty was imposed. Since the Ld.AO has levied penalty @ 60%, it indicates that the proceedings have been initiated under section 271AAB(1A)(b) of the Act.

Our Submission

The Ld. DR has failed to appreciate that the issue is whether penalty notice issued under section 271AAB(1)of the Act dated 29-09-2021, which has been issued for the search initiated on 07-11-2019, instead of section 271AAB(1A) of the Act and also without mentioning the specific limb is valid or not.

In fact, the submission of the Ld. DR supports the appellant's contention that the impugned penalty notice was vague and it was only from the penalty order the Ld.AO has informed the appellant the limb under which the penalty has been imposed.

The appellant has submitted various case laws, wherein it has held that if penalty notice is vague, it vitiates the penalty proceedings:

- Hon'ble Jurisdictional High Court (Chennai) in the case of PCIT v. R. Elangovan – TCA Nos 770 & 771 of 2018 dated 30-03-2021.



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- Hon'ble ITAT – Chennai – DCIT Vs R Elangovan – ITA No. 1199/CHNY/2017 dated 05-04-2018
- Hon'ble ITAT – Chandigarh – Happy Steel Pvt Ltd Vs DCIT – ITA No.398/CHD/2023 dated 05-06-2024
- Hon'ble ITAT- Delhi – Jaina Marketing & Associates Vs DCIT [2024] 162 taxmann.com 439 (Delhi - Trib.)
- Hon'ble ITAT- Pune – Kishore DigambarPatilVs ITO [2023] 149 taxmann.com 502 (Pune - Trib.)
- Hon'ble ITAT- Jaipur: R. P Wood Products Private Limited Vs. DCIT, ITA 302/JP/2023 dated 11-07-2023:
- Hon'ble ITAT- Nagpur – Chandra Suresh Kothari Vs DCIT [2022] 135 taxmann.com 275 (Nagpur - Trib.)
- Hon'ble ITAT- Indore – Ashok Bhatiya Vs DCIT – ITA No 869/Ind/2018 dated -05-02-2020
- Hon'ble ITAT- Jaipur – Padam Chand Punliya Vs ACIT [2020] 119 taxmann.com 446 (Jaipur - Trib.)
- Hon'ble ITAT- Jaipur – AparnaAgarwal Vs DCIT [2019] 105 taxmann.com 233 (Jaipur - Trib.)

Following the Hon'ble SC decision in the case of CIT Vs SSA Emerald Meadows [2016] 73 taxmann.com 241 (SC)

Hence, it is settled issue, upheld in several judicial decisions, that the AO is required to indicate the limb of the charge, while initiating the penalty proceedings and failure to do so vitiate the penalty proceedings and renders the penalty order invalid.

b) Section 292B Cures the procedural lapse

The Ld. DR has submitted that the omission of mentioning the specific limb of charge in the impugned penalty is a curable defect, under section 292B of the Act and the impugned penalty notice shall not be regarded as invalid. The Ld.DR has also relied on the decision of the Hon'ble Bombay High Court in the case of CIT Vs Kaushalya (1995) 216 ITR 660 (Bom).

Our Submission

As held by the Hon'ble Supreme Court, various High Courts and the Benches of the Hon'ble ITAT in several decisions, mentioning of the specific limb which specifying the charge in the penalty notice is "sine-qua-non for levy of penalty". Hence, if the penalty notice is vague and not specific, it is a "Jurisdictional defect", which goes to the root of the matter, which cannot be cured by section 292B of the Act.



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For this proposition, we place our reliance on the jurisdictional decisions of the Hon'ble ITAT

In the case of PVP Ventures Ltd Vs DCIT dated 08-06-2022 in ITA No.778/Chny/2019, wherein it has been held as under:

"6.....Framing of specific charges is sine-qua-non for levy of penalty since the assessee must be put to allegations for which the penalty was being levied. In the absence of such a specific charge, the penalty would be bad-in-law and the same is not a curable defect u/s 292BB. This position has been settled in numerous binding judicial precedents."

which has been followed by the Hon'ble Jurisdictional Benches of the ITAT in the cases of

- Sri Maharani Finance Corporation Vs DCIT in ITA No.1264/Chny/2023 dated 03-06-2024 and
- Dakshinamoorthy Kumaresan Vs ITO in ITA No.2452/Chny/2024 dated 17 12-2024

Although those decisions were rendered in the context of section 271(1)(c) of the Act, the same principle would equally apply to Section 271AAB of the Act

Further, the Ld.DR reliance on the decision of the Hon'ble Bombay High Court in the case of CIT Vs Kaushalya (1995) 216 ITR 660 (Bom) do not death with the section 292B of the Act at all.

Further, this decision only supports contention of the appellant, wherein it has held the order of the Tribunal for quashing the penalty notice as it was vague for AY 1967-68 at para 10 of the judgment.

c) No prejudice Caused to the assessee

The Ld.DR submitted that prejudice has been caused to the assessee, as the assessee was given opportunity of being heard.

Our Submission

When the impugned penalty notice is invalid, the entire proceedings gets vitiated and the question of giving opportunity of being heard or whether prejudice is caused or not are of no significance. Further, such invalid notice would cause prejudice to the assessee. For this proposition, we place our reliance on the Full Bench Decision of the Hon'ble Bombay High Court decision in the case of Mohd. Farhan A. Shaikh Vs DCIT [2021] 434 ITR 1 (Bom) (FB), which held as under

"188. We may, in this context, respectfully observe that a contravention of a mandatory condition or requirement for a communication to be valid communication is fatal, with no further proof. That said, even if the notice contains no caveat that the



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inapplicable portion be deleted, it is in the interest of fairness and justice that the notice must be precise. It should give no room for ambiguity. Therefore, Dilip N. Shroff Case (supra) disapproves of the routine, ritualistic practice of issuing omnibus show-cause notices. That practice certainly betrays non- application of mind. And, therefore, the infraction of a mandatory procedure leading to penal consequences assumes or implies prejudice."

d) Search context and Legislative intent

The Ld. DR submitted that the under the search done u/s 132 of the Act, unearthed unaccounted cash transactions, which warrants penalty of 60%. Invalidating the notice on technical issue, would defeat the intent of the legislature.

e) Holistic Interpretation of the Notice

The Ld. DR submitted that the notice must be read in conjunction with the assessment order, penalty order and search proceedings.

f) Assessee's Conduct Warrants Penalty

The Ld. DR submitted that the appellant has concealed the income, hence, the Ld.AO is justified in levying penalty

Our Submissions

Again, the Ld. DR is jumping the gun by justifying the action of the Ld.AO by passing the penalty order levying penalty of 60% of undisclosed income. The issue is not whether the action of the assessee, evidence gathered during search justifies or warrants levying of penalty or not.

There is a no provision under the Act, which specifies that the penalty notice must be read in conjunction with assessment order and penalty order and there is no jurisprudence relied upon by the Ld.DR for such a proposition. Rather, there are several decisions, wherein it has held that penalty is independent of the assessment proceedings and a valid penalty notice is a "sine qua non for levying penalty".

The Ld. DR has failed to answer the question raised by the Hon'ble Bench, whether the Ld.AO has issued a valid penalty notice to assume jurisdiction to initiate the penalty proceedings, in the light of the various judicial precedents cited by the appellant that if the penalty notice is vague, then penalty proceedings gets vitiated.

h) Judicial Precedence- SC decision in the case of Mak Data P. Ltd Vs (2013) 358 ITR 593 (SC)

The Ld. DR has relied on the Hon'ble SC decision in the case of Mak Data P. Ltd Vs (2013) 358 ITR 593 (SC) for the proposition the penalty could be levied despite procedural lapses, as the assessee has participated in the proceedings and was aware of the allegations.



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Our Submission

The Hon'ble SC decision relied by the Ld.DR is wholly distinguishable on facts and law. In that case, the question was whether the assessee would be absolved from penalty, if he has voluntarily disclosed his income. It is not a case, where the penalty notice issued by the Ld.AO is valid or not.

Hence, the reliance of the abovementioned SC decision by the Ld.DR is totally misplaced, as it is distinguishable both on facts and law.

i) Burden on Assessee to Prove Invalidity

The Ld. DR submitted that the burden is on the appellant to prove that the incorrect section reference made by the Ld.AO caused confusion and prejudice to the appellant but the appellant failed to establish it. Hence the Ld.AO is justified in levying penalty @ 60% on the undisclosed income.

Our Submission

The question of burden of proof would arise, only if the proceedings are validly initiated and the Ld.AO has assumed proper jurisdiction and issued a proper show-cause notice. In the absent of any valid proceedings, the question of discharging the burden of proof by the appellant does not arise.

In view of the above decisions, we humbly submit before Your Honours that the impugned penalty order is liable to be quashed.

22. Having heard both the parties and after perusal of the records, it is noted that the AO in the assessment order for AY 2020-21 have recorded his satisfaction of initiating penalty proceedings against the assessee u/s.271AAB of the Act [*instead of sec.271AAB(1A) of the Act*]. And the AO after recording his satisfaction u/s.271AAB of the Act continued with the same intent by issuing impugned notices dated 29.09.2021 u/s.274 r.w.s.271AAB of the Act asking the assessee to show case as to why an order imposing a penalty under sub-section (1) of section 271AAB of the



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Act should not be imposed on the assessee, a copy of which is reproduced as under:

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

PAN: AAMTS3888G

Date: 29-09-2021

To

M/s St. Joseph's Educational Trust,
No.56-C, Old Mahabalipuram Road,
Sholinganallur, Chennai 600 119.

DIN: ITBA/AST/M/143(3)/2021-22/1035999658(1)

Sir/Madam,

Whereas in the course of proceedings before me for the Assessment Year 2020-21, 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 authorized representative at 11:30 AM on 12/10/2021 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 authorized representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section 271AAB(1) of the Income Tax Act, 1961.

Sd/-

(J. SARAVANAN)

Assistant Commissioner of Income Tax
Central Circle-1(3), Chennai



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23. Since the AO has given show cause notice (SCN) to the assessee for levying penalty u/s.271AAB(1) of the Act, it would be gainful to refer to section 271AAB(1) of the Act, which reads as under:

Penalty where search has been initiated.

271AAB. (1) The Assessing Officer or Commissioner (Appeals) 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 but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—

(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



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(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).

24. A bare reading of the aforesaid penalty provision, and especially the opening words would reveal that the AO/Ld.CIT(A) "may" direct the assessee to pay by way of penalty under this section", which conveys the meaning that the AO has discretion to initiate or not to initiate penalty under this provision. So levy of penalty u/s.271AAB of the Act is not mandatory, because, the Parliament has not used the term "shall" instead used "may". Or else, the expression would have been viz., i.e. *the AO or CIT(A) shall direct the assessee to pay by way of penalty u/s.271AAB of the Act*, which is not the wording of the statute. Therefore, it can be safely presumed that the AO has the discretion to levy of penalty or not u/s.271AAB of the Act. Having said so, sub-section (1) provides that in a case where search has been initiated u/s.132 of the Act on or after 01.07.2012 but before 14.12.2016, the assessee shall be liable to pay by way of penalty in addition to tax, if any, payable by him, a sum computed @10% of the undisclosed income of the specified previous year if he satisfies the conditions given in sub-clause (a) of sub-section (1) of



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section 271AAB of the Act. Likewise, the assessee shall be liable to pay by way of penalty in addition to tax, if any, payable by him, a sum computed @20%, if such assessee satisfies the condition given under sub-clause (b) of sub-section (1) of section 271AAB of the Act. Likewise, the assessee shall be liable to pay by way of penalty in addition to tax, if any, payable by him, a sum computed @60% of the undisclosed income of the specified previous year, if his case is not covered by sub-clause (a) & (b) of sub-section (1) of section 271AAB of the Act. The jurisdictional fact for exercising power under sub-section (1) of sec.271AAB of the Act, where search has been initiated u/s.132 of the Act on or after 1st July, 2012 but before 15.12.2016. In other words, penalty u/s.271AAB(1) of the Act can be levied only in a case where assessee has been searched between 01.07.2012 & 15.12.2016; and if the search had taken place before 01.07.2012 or after 15.12.2016, then the AO is not empowered by law to levy penalty u/s.271AAB(1) of the Act. Coming to the present case, it is undisputed that search was initiated against the assessee's on 07.11.2019, hence the AO didn't had the jurisdiction to issue notice u/s.271AAB(1) of the Act, because operation of sub-section (1) of section 271AAB of the Act is only up to cases where search has been conducted



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up to 15.12.2016. Therefore, the AO erred in recording his satisfaction [in the Assessment Order for AY 2020-21 on 31.03.2022] that "penalty proceedings u/s.271AAB of the Act is initiated separately" and thereafter, continued with the lapse of having issued impugned show cause notice dated 29.09.2021 u/s.274 r.w.s.271AAB(1) of the Act calling upon the assessee to show cause 'as to why' an order imposing penalty u/s.271AAB(1) of the Act should not be levied, which action strikes at the root of the jurisdiction of the AO for issuing such an impugned notice; and such a gross legal infirmity in the notice prior to imposition of penalty would vitiate the penalty order passed under section 271AAB of the Act. In this context, it is important to note that sub-section (3) of section 271AAB of the Act incorporates the procedure stipulated in section 274 & 275 of the Act, before the AO can validly levy penalty upon the assessee. Section 274 ensures that no penalty under Chapter XXI shall be imposed, unless the assessee has been given a reasonable opportunity of being heard, which means that before levy of penalty under either sub-section (1) or (1A) of section 271AAB of the Act, reasonable opportunity has to be given to the assessee before imposition of the penalty by giving assessee proper, legally valid notice to the assessee. Hearing must be a



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genuine hearing and not an empty formality. When the statute requires the AO to give reasonable hearing before imposition of penalty, the AO was duty bound to give proper notice spelling out the charge/fault, under which, the AO intends to put the assessee on notice for levy of penalty, so that the assessee would be able to defend its case. Therefore, we are of the view that the AO was duty bound to issue notice spelling out the specific limb under which penalty proceedings has been initiated. In the instant case, as noted since the search was initiated on 07.11.2019, the AO ought to have issued notice under sub-section (1A) of section 271AAB of the Act and also mentioned the specific limb [clause (a) or clause (b) of sec.271AAB(1A) of the Act] under which the assessee is being proceeded against for levy of penalty. Different consequences are envisaged if charged under clause (a) or clause (b) of sub-section (1A) of section 271AAB of the Act. The AO therefore should have issued proper notice to the assessee. Omnibus notice (SCN) betrays application of mind by the AO and issuance of such kind of notices has been deprecated by the Hon'ble High Courts in several cases including the jurisdictional Madras High in the case of Shri R. Elangoan v. PCIT in TCA No.770 & 771/2018 dated 30.03.2021, wherein the Hon'ble Madras High Court upheld the



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action of this Tribunal, quashing the penalty proceedings finding similar notice to be bad in law being vague and ambiguous. And in this case, their Lordships also referred to the decision of the full Bench of the Hon'ble Bombay High Court in the case of Mohd. Farhan A. ShaikhVs DCIT [2021] 434 ITR 1 (Bom) (FB), wherein the Hon'ble Bombay High Court observed as under:

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

25. Thus, we are of the view that the notice issued prior to imposition of penalty, the AO should spell out the specific charge/fault for which the AO intends to levy penalty. Failure to do so would seriously prejudice the assessee to defend the fault/charge which omission is antithetical to fair hearing as guaranteed by section 274 of the Act as well as by the Constitution of India. The Ld.CIT(A)'s attempt to read the impugned notice issued by the AO as if it was under sub-section (1A) of section 271AAB of the Act, can't be countenanced because he was called upon to adjudicate and answer the legal issue raised before him that the AO's



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action of issuing the penalty notice under sub-section (1) of section 271AAB, instead of under sub-section (1A) of section 271AAB of the Act is bad in law. Instead of answering the validity of impugned notice, he simply has referred to first & second para of the impugned notice and states that since the AO in the first para of notice referred to search carried out in AY 2020-21 & in second para referred to sub-section (1) of section 271AAB of the Act, the AO referred to sub-section (1A) of section 271AAB of the Act is misdirected, misconceived and flawed, because the assessee was challenging the jurisdiction of the AO to have issued the impugned notice u/s.271AAB(1) of the Act. Thus, we find that the Ld.CIT(A) erred in dismissing the legal ground raised by the assessee challenging the jurisdiction of the AO to have issued notice under sub-section (1) of section 271AAB, which provision of law was not in force for issuing such a notice in assessee's case as discussed.

26. And as noted, levy of penalty u/s.271AAB of the Act is not mandatory and it is discretionary; and also the AO has discretion to levy of penalty at different rates meaning different consequences, provided the assessee is able to show that he satisfies certain conditions necessary for imposition of lesser penalty. In such a case, the AO was required to give



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proper notice to the assessee. In this case, the AO ought to have been given notice under sub-section 1A of section 271AAB of the Act and also as to whether assessee case falls under sub-clause (a) or (b), so that the assessee is able to defend its case properly. Having failed to issue the jurisdictional notice u/s.271AAB(1A) either under sub-clause (a) or sub-clause (b) and instead issued notice u/s.271AAB(1) which didn't empower the AO to levy penalty in this case, we are of the view that the entire penalty proceedings right from issue of notice to imposition of penalty shows total non-application of mind, which exposes the arbitrary action of the AO, and thus, vitiated the impugned action for these reasons as well; and hence, we hold the AO's action to be ab initio void.

27. Even though, the Ld.DR submitted that no prejudice has been caused to the assessee by issuing notice, we are of the view that principle of *audi alteram partem* lies at the very heart of procedural fairness. No one can be condemned without being given an opportunity to present ones case. Question about prejudice caused due to non-observance of principles of natural justice can't be raised when such principle is incorporated in statutory proceedings. In the present case, we are of the view that since section 274 mandates the AO to have given the assessee



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reasonable opportunity of being heard, and it would be meaningless if the assessee is given notice which he was not empowered to issue under the law and therefore, such an action strikes at the root of the jurisdiction of the AO to have issued notice u/s.274 r.w.s.271AAB(1) of the Act which vitiates the entire penalty proceedings and therefore consequent penalty levied is null in the eyes of law and therefore, penalty order is quashed.

28. In the light of the discussion rendered in ITA No.3294/Chny/2024 i.e. in St. Joseph's Educational Trust case, the issue being identical for the same reasons given supra, we cancel the impugned penalty levied u/s.271AAB of the Act in the case of St. Joseph's Institute of Science & Technology Trust i.e. ITA No.3297/Chny/2024 and quash the impugned notice & penalty order being null in the eyes of law.

29. In the result, all the appeals filed by the assesseees are allowed.

Order pronounced on the 06th day of June, 2025, in Chennai.

Sd/-

(जगदीश)
(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)
(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**



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TLN

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF