

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "F", NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

	ITA NO. 9328/Del/2019	
	A.YR. : 2013-14	
SANJEEV KUMAR, 77-78, RAMA ROYAL RESIDENCY, MILK MOHSANGARH, SIYANA ROAD, BULANDSHAHR, UTTAR PRADESH-203001 (PAN: ABBPK0132H)	VS.	ACIT, CC-14, NEW DELHI
(APPELLANT)		(RESPONDENT)

Appellant by : Dr. Rakesh Gupta, Adv. &
Sh. Deepesh Garg, Adv. &
Sh. Saksham Agarwal, Adv.
Respondent by : Ms. Amisha Gupt, CIT(DR)
Date of hearing : 23.05.2025
Date of pronouncement : 22.08.2025

ORDER

PER MAHAVIR SINGH, VP :

The Assessee has filed the instant Appeal against the Order of the Ld. CIT(A)-26, New Delhi dated 14.11.2019, relating to assessment year 2013-14. The only solitary issue argued by the Ld. AR is relating to action of the Ld. CIT(A) in initiating and imposing penalty u/s. 271(1)(c) of Rs. 30,34,380/- on

an amount of Rs. 98,20,000/- (however it should have been Rs. 92,00,000/-) which was surrendered by the assessee in his return of income filed u/s. 153A.

2. The brief facts of the case are that AO made the additions vide his order dated 20.12.2016 passed u/s. 153A/143(3) of the Act and assessed the income at Rs. 97,33,69,570/- and initiated the penalty u/s. 271(1)(c) of the Act. Further, during the year under consideration, the assessee has surrendered Rs. 41,80,000/- and Rs. 50,20,000/- which is declared in the return of income, by initiating the penalty u/s. 271AAB of the Act. Later on, AO imposed the penalty vide order dated 31.3.2019 u/s. 271AAB of the Act and also imposed penalty u/s. 271(1)(c) of the Act. In appeal Ld. CIT(A) deleted the penalty imposed u/s. 271AAB vide order dated 16.10.2019 and vide order dated 14.11.2019 imposed the penalty u/s. 271(1)(c) in respect of Rs. 98,20,000/- (however, it should have been Rs. 92,00,000). Against the aforesaid, assessee is in appeal before us.

3. We have heard both the parties and perused the records. We find that no penalty u/s. 271(1)(c) can be imposed qua the amount of Rs. 92,00,000/- (wrongly mentioned by the CIT(A) as Rs. 98,20,000/-) which was surrendered in the return of income of Assessment Year 2013-14 filed u/s. 153A, in view of the settled law decided in the case of PCIT vs. Neeraj Jindal (2017) 393 ITR 1 (Del. HC). In any case, Ld. CIT(A) could have initiated penalty and could not have imposed this penalty u/s. 271(1)(c) when it was not initiated by AO as AO initiated penalty proceedings u/s. 271AAB in respect of this sum of

Rs. 92,00,000/- as per assessment order and imposed penalty u/s. 271AAB on this sum which was deleted by the CIT(A). It is also noted the AO initiated penalty u/s. 271AAB in respect of the surrendered amount of Rs. 92,00,000/- (Rs. 41,80,000/- + Rs. 50,20,000). It is further observed from the copy of penalty order passed u/s. 271AAB dated 31.3.2019 in assessee's case for the year under consideration wherein, penalty u/s. 271AAB was imposed by the AO qua the surrendered amount of Rs. 92,00,000/- (wrongly mentioned as as 98,20,000/-). As per appeal order passed by the CIT(A) against the penalty order passed u/s. 271AAB wherein, CIT(A) has deleted the penalty u/s. 271AAB and initiated penalty u/s. 271(1)(c) in respect of surrendered amount of Rs. 92,00,000./- It is further observed from the page no. 31-32 of the paper book that the copy of notice dated 16.10.2019 issued by the CIT(A) was for initiation of penalty u/s. 271(1)(c) of the Act. In view of the above, the jurisdiction u/s. 271(1)(c) assumed by the CIT(A) is not in accordance with law and notice u/s. 271(1)(c) so issued by CIT(A) is also not in accordance with law, hence, the same quashed. To support our aforesaid view, we draw our support from the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Neeraj Jindal (2017) 393 ITR 1 (Del. HC) wherein, it has been observed as under:-

“Section 271(1)(c), read with section 153A of the Income Tax Act, 1961 – Penalty - for concealment of income (Revised return) – Assessment years 2005-06 and 2006-07, Whether when an assessee has filed revised return after search has been conducted, and such revised return has been accepted by the AO, then merely by virtue of fact that such return showed a higher income, penalty

under section 271(1)(c) cannot be automatically imposed-Held, yes- Whether once Assessing Officer accepts revised return filed under section 153A, original return under section 139 abates and becomes non-est, and, thus, ‘concealment’ has to be seen with reference to revised return filed by assessee –Held, yes, Whether in order for Explanation 5 to section 271(1)(c) to apply, it is necessary that there must be certain assets found in possession of assessee during search, and assessee must claim that such assets have been acquired by him by utilizing (wholly or in part) his income – Held, yes. (Heads Notes Only)

4. In the background of the aforesaid discussions and respectfully following the binding precedent, the impugned penalty in dispute is hereby deleted by setting aside the orders of the authorities below.

5. Further, it is noted that it was the contention of the assessee that Ld. CIT(A) has erred in law and on facts in imposing the penalty u/s. 271(1)(c) and passing the impugned penalty order and that too without recording the mandatory ‘satisfaction’ as per law and without levying a clear charge whether there was concealment of income or furnishing of inaccurate particulars of income. We find that Ld. CIT(A) has observed as under:-

“...H. Keeping in view the overall facts and circumstances of the case and decisions of various appellate authorities in this regard, I am satisfied that the assessee appellant has indeed concealed correct income particulars by furnishing inaccurate particulars of income. Accordingly, it is a fit case for imposition of penalty. I, therefore, impose a penalty @ 100% of the income sought to be concealed by furnishing inaccurate particulars, such income so determined per the quantum appeal order dated 18.12.2017....”

6. Faced with the aforesaid facts and circumstances, we quote PCIT vs. Sahara India Life Insurance Co. Ltd. (2021) 432 ITR 84 (Del.) and PCIT vs.

Gopal Kumar Goyal (2023) 153 taxmann.com 534 (Del.) to conclude that once the AO has not specified the corresponding limb in his section 271(1)(c) penalty show cause notice forming part of the case records, his failure to this clinching effect indeed vitiates the penalty proceedings itself. We order accordingly.

7. All other pleadings in merit in the assessee's instant appeal stand rendered academic.

8. In the result, the Appeal filed by the Assessee stands allowed.

Order pronounced on 22/08/2025.

Sd/-

Sd/-

**(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**(MAHAVIR SINGH)
VICE PRESIDENT**

Date: 22-08-2025

SRBHATNAGGAR

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar