

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

ITA No.690/Ind/2025  
(AY: 2010-11)

Pramod Kumar Gupta, A-160, New Meenal Residency, J.K. Road, Bhopal <b>(PAN: ACDPG3156A)</b> (Appellant)	<b><u>बनाम/</u></b> Vs.	DCIT (Circle) 5(1) Bhopal (Respondent)
Assessee by	Shri S.S. Deshpande, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	12.01.2026	
Date of Pronouncement	16.01.2026	

**आदेश / O R D E R**

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

This is an Appeal filed by the Assessee under section 253 of the income tax Act 1961,[ herein after referred to as the Act for the sake of brevity] before this tribunal as & by way of a second Appeal. The Assessee is aggrieved by the order bearingNumber:-ITBA/NFAC/S/250/2025-26/1077794992(1) dated 25.06.2025 passed by the Ld. CIT(A) u/s 250 of the Act, which is herein after referred to as the “**Impugned order**”. The Relevant Assessment year is 2010-11 and the

corresponding previous year period is from 01.04.2009 to 31.03.2010.

2.

**Factual Matrix**

2.1 That as and by way of a penalty order made u/s 271(1)(c) of the Act wherein the penalty of Rs.6,50,000/- is levied upon the assessee these proceedings have arisen. That the aforesaid penalty order is dated **31.03.2017** of Dy. CIT-5(1) Bhopal M.P. which is hereinafter referred to as the **"Impugned Penalty Order."**

2.2 Further as & by way of an assessment order made u/s 143(3) of the Act, the total income of the assessee was computed & assessed at **Rs.37,02,430/-**. The total income as per the return of income was at **Rs.16,60,780/-**. The addition of **Rs.20,41,650/-** was made by adopting a net profit rate of 8% which was found to be reasonable basis para 4 of the aforesaid assessment order which we reproduce as below:-

*"4. It is pertinent here to mention that the assessee had also been assessed on the basis of best judgment for the A.Y. 2009-10. The Hon'ble CIT(A)-11, Bhopal had adopted a net profit rate of 8% in the case of the above assessee. The CIT(A)-II, Bhopal has found*

*8% N.P. in case of the assessee to be reasonable. The assessed as well as the revenue were in appeal against the order of the CIT(A)-11, Bhopal. However the Hon'ble ITAT, Indore has confirmed the appellate order of the CIT(A), In case of the present assessment proceedings the material facts are similar and there is no reason why the net profit approved by the two appellate authorities in the case of the assessee for an earlier assessment year should not be adopted for A.Y. 2010-11 also. In case of the assessee, as nothing was produced for verification estimation of net profit is the only reasonable method to work out the business profit earned by the assessee. Relying upon the reasonable estimation of the appellate authorities in the case of the assessee for A.Y. 2009-10-1 also assessed the income of the assessee at the rate of 8% of Net Profit which works out to be Rs. 20,41,650/-, Therefore the amount of Rs, 20,41,650/- is being added to the total income of the assessee."*

That the aforesaid assessment order is hereinafter referred to as the "**Impugned Assessment Order**" & the same is dated 28.03.2013. It is pertinent to mention that in para 5 of the "**Impugned Assessment Order**" it is recorded as under:-

*"Penalty u/s 271(1)(c) is being initiated separately."*

2.3 That the assessee being aggrieved by the aforesaid "**Impugned Penalty Order**" dated 31.03.2017 prefers the first appeal u/s 246A of the Act before the Ld. CIT(A) who by the "**Impugned Order**" has dismissed the first appeal of the assessee on the ground & reasons stated therein. The core

grounds & reasons for the dismissal of the first appeal are as under:-

*"5.4 Further, it has been noted by the AO that addition at 8% of net profit on the similar facts was made for the AY 2009-10 and the CIT(A)-II, Bhopal found 8% rate in the case of the appellant to be reasonable. The appellant filed appeal before Hon'ble ITAT against CIT(A)'s order for AY 2009-10. Here also, the Hon'ble ITAT, Indore confirmed the CIT(A) order by finding that 8% rate of Net Profit is reasonable.*

*5.5 Moreover, it is pertinent to mention that in the appellant's case, book result was rejected u/s 145(3) of the Act on ground that the appellant did not comply with the notices issued during the assessment proceedings which was necessary to verify the correctness of book result, Non furnishing of the details called for that too deliberately and with consciously is nothing but an attempt to avoid further investigation by the department and thereby conceal the income. Further, once book result is rejected under section section 145/3) of the Act, the estimation of profit is only option left before AO. Therefore, it cannot be said that the addition was made purely on guess or estimation basis. In fact, it is a fit case or concealment of income as no details were produced at the time of assessment proceedings. As far as lack of opportunities is concerned, the AO had issued a notice on 20.03.2017 to the appellant during the penalty proceedings to which the appellant did not file any response. The AO has clearly mentioned in the penalty order that there was concealment of income in this case. Further, the case laws relied upon by the appellant are either irrelevant or different from the facts of this case and hence, no applicable in the instant case*

*5.6 In view of the above discussion and following the decision of Hon'ble ITAT in appellant's own case, I hereby confirm the penalty levied by the AO. There is no point to deviate from the AO's finding which has already been upheld by the two authorities on the very same issue with similar facts. Accordingly, appeal is dismissed.*

*6. In the result, the appeal is dismissed."*

2.4 The assessee being aggrieved by the **"Impugned Order"**

has preferred the instant second appeal before this Tribunal & has raised the following grounds of appeal in the Form No. 36 against the **"Impugned Order"** which are as under:-

- 1. The Ld. CIT(A) has erred in maintaining the penalty of Rs. 6,50,000/- u/s 271(1)(c).*
- 2. The levy of penalty is bad in law since, no specific satisfaction in the assessment order nor in the penalty notice.*
  - 1.1 The Ld. AO has not mentioned about the specific charge of penalty in the assessment order, or in the penalty notice, as to whether, the penalty levied is for concealment of income or furnishing of inaccurate particulars of income. In view of the judgment of the Hon. MP High Court, in the case of PCIT vs Kulvant Singh Bhatia 33 ITJ 777, the levy of penalty is bad in law.*
- 2. The levy of penalty is bad in law since the income has been estimated and addition has been made after applying the NP percentage.*
- 3. It was proved before the Ld. CIT(A) and the Ld. A.O. that the assessee has neither concealed any income nor furnished any in accurate particulars of income. The assessee has disclosed all the necessary details in the return. Thus, there is no concealment of any income. The levy of penalty is thus unjust and bad-in-law.*
- 4. The penalty levied may please be cancelled.*
- 5. The assessee craves to amend, alter or delete any of the ground of appeal."*

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 12.01.2026 when the Ld. AR for & on behalf of the assessee appeared before us & interalia contended that the **"Impugned Order"** is bad in law, illegal & not proper. It therefore deserves to be set aside. The Ld. AR has placed on the record of this tribunal a paper book containing pages 1

to 20. The Ld. AR has also placed on record of this Tribunal a brief submissions with few documents dated 12.01.2026. The Ld. AR has also placed on record a letter dated 05.01.2026 addressed to Pr. CIT-1 Bhopal wherein copy of notice issued u/s 271(1)(c) dated 28.08.2013 is sought. [total 3 pages]. It was submitted that the imposition of the penalty is totally uncalled for as in the **"Impugned Assessment Order"** addition is made basis **"estimation"**. It was also submitted that in the **"Impugned Assessment order"** **"satisfaction"** is not properly recorded at all. It was submitted that penalty notice [original copy] is not received by the assessee. The reliance was placed on the judgement of the jurisdictional High court in case of *PCIT vs. Kulwant Singh Bhatia case [33 ITJ 777]*. It was submitted that in the impugned penalty order & so also in the **"Impugned Assessment Order"** the material ingredients of section 271(1) are not stated. It is not known to the assessee as to whether which limb of section 271(1) is attracted/invoked. It was submitted that it is incumbent upon the department to state expressly both in notice as well as order as to whether the

assessee has "concealed the particulars of his income or "furnished in accurate particulars of such income". Nothing is stated either about "concealment of income" or about "furnishing in accurate particulars of such income". It was submitted that it is incumbent upon the authorities to state in the notice as to whether "charge of concealment of income" is invoked or "charge of furnishing in accurate particulars" are invoked. In the absence, the notice u/s 271(1)(C) becomes defective & all the consequential orders flowing from it are bad in law & illegal. Basis three page written submission filed today which has a copy of notice dated 29.03.2013 it was submitted that there is not even a whisper about the "concealment of income" or "furnishing of inaccurate particulars of income" with in the meaning of section 271(1)(C) of the Act. It was also submitted that for the Assessment Year 2009-10 also the addition was made on estimated basis by applying the net profit rate basis judgment of Tribunal. **It was submitted that for the Assessment Year 2009-10 no penalty order was received by the assessee.** An affidavit of the assessee dated 08.01.2026 is placed on record affirming that for the Assessment Year 2009-

10 no penalty notice/order was received by the assessee from the department. It was also submitted that when there is non-satisfaction of a particular charge u/s 271(1)(c) of the Act no penalty can be imposed. It was further submitted that the Ld. Assessing Officer has not made any specific finding in the **"impugned assessment order"** whether the "income is concealed" or "inaccurate particulars are furnished" by the assessee. In the **"impugned assessment order"** it is merely mentioned that proceedings u/s 271(1)(C) are separately initiated. Even the show cause notice also mentions show cause why penalty should not be imposed u/s 271(1)(C) of the Act. [copy of subsequent notice placed on record dated 28.03.2013]. The Ld. Assessing Officer himself was not satisfied about the offence/charge committed by the assessee. Attention was drawn to page 14 of PAPER BOOK filed which is a copy of notice dated 23.02.2016 where in too, nothing is recorded u/s 271(1)(C) either about "concealment of income" or "about furnishing of inadequate particulars". It was also finally submitted that no penalty u/s 271(1)(C) can be imposed basis estimation. Per

contra the Id. DR has placed reliance on the impugned order of Ld. CIT(A) hearing was closed.

4. **Observations & findings & conclusions**

4.1 We now have to decide the legality, validity and propriety of the **"impugned order" basis records of the case.**

4.2 We have carefully perused the records of the case and have heard the rival submissions canvassed before us.

4.3 We basis record of the case & after hearing & upon examining the rival contentions of the Ld. AR & the Ld. DR canvassed before us are of the considered opinion that in the **"impugned assessment order"** & so also in the **"Impugned penalty order"** there is no categorical assertion, &/or finding &/or satisfaction as to how the penalty of Rs. 6,50,000/- is imposed u/s 271(1)(C) of the Act. **The penalty under the Act is an deterrent measure against the assessee & therefore there should be a clear & express finding** as to whether the assessee is held liable for **"concealment of income"** or for **"furnishing inaccurate particulars"**. In the **"Impugned penalty order"** of Ld. Assessing

Officer it is finally held as under **“considering the facts & circumstances of the case I levy penalty of Rs.6,50,000/- only u/s 271(1)(C) of the Act.** In the ultimate analysis it is not held that penalty is levied for concealment of income or for furnishing inaccurate particular.

4.4 Further we observe that in the written submission dated 12.01.2026[a three pages one] a notice dated 28.03.2013 is attached & in that also it is not stated expressly as to penalty is proposed to be levied u/s 271(1)(C) for concealment of income or for submitting inaccurate particular of income. The allegation with regard to imposition of penalty in the said show cause notice dated **28.03.2013 is not express.** Further even in the show cause notice dated **23.02.2016** page 14 of PAPER BOOK **by follow up** the allegation on concealment of income or for submitting inaccurate particular of income **are not expressly. Stated & avered.** We therefore hold that even notice(s) dated **28.03.2013 & 23.02.2016** by virtue of which the assessee was called upon to show cause as to why the penalty u/s 271(1)(c) should not be imposed upon him is totally silent on allegation/charge about either **“concealment of income by**

assessee or” for furnishing inaccurate particulars of income”.

We hold that issuance of notice(s) (supra) is vague & not in the conformity with law. We hold that before imposing penalty the **authorities must be clear in their mind as to which specific limb u/s 271(1)(C)** they intend imposing the penalty on the assessee. In the absence of any averment on **“concealment of income by assessee” or furnishing inaccurate particular of income”** the notice(s) (supra) are defective, illegal & bad in law.

4.5 We **hold that** penalty is in **addition to tax liability of the assessee. It entails serious civil consequences to the assessee too.** We concur with the contention of Ld. AR that it is incumbent upon the revenue to state expressly in the notice(s) supra the **material ingredients** of Section 271(1)(c) of the Act. The authorities must specify expressly as to whether the case is one of the concealment of income or furnishing inaccurate particulars of income. In the instant case **nothing is spelt out by the Revenue, save and except bare Section 271(1)(c) of the Act which perse is not sufficient compliance of law.** While issuing notice(s) for penal proceeding **authorities must be clear in their mind at the time of issue itself as to whether charge**

of concealment of particulars of income would hold or whether the charge of furnishing inaccurate particulars of income would hold. **Failure to mention either of these charges within the meaning of Section 271(1)(c) of the Act would vitiate the entire penal proceedings against the assessee.** We are fortified in our view in view of the judgment of M.P High Court in case of Principal Commissioner of Income Tax V/s Kulwant Singh Bhatia dated 9<sup>th</sup> May, 2018 in ITA No.9 to 14 of 2018 wherein Hon'ble Divisional Bench has held as under:-

*"5. The respondent - assessee challenged the said order by filing separate six appeal before the Income Tax Appellate Tribunal, Indore, Bench Indore. The learned Tribunal considering the fact that these six appeals involved a common issue arising out of the same set of facts and heard together and all the six appeals are being disposed of by passing a consolidated order on 11.8.2017. The ground raised before the ITAT, was that the imposition of penalty is illegal in as much as vague and cryptic show-cause notice was issued to the assessee under [Section 274](#) of the Act of 1961, without making him aware of the specific charge levied against him and, therefore, in view of the decision of the Karnataka High Court in the case of CIT V/s. Manjunatha Cotton Ginning Factory, (2013) 359 ITR 565 (Kar), the penalty so imposed by the Assessing Officer deserve to be deleted.*

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

The penalty notice under [Section 274](#) read with [Section 271\(1\)\(c\)](#) were issued in the typed format without striking off either of two charges, i.e., which is reproduced as :

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

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

8. In the case of CIT V/s. Manjunatha Cotton Ginning Factory (supra), it was observed by the Karnataka High Court in para 59 that the practice of the Department sending a printed form where all the ground mentioned in [Section 271](#) are mentioned would not satisfy the requirement of law when the consequences of the assessee not rebutting the initiated presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the provisions have to be held to be strictly construed, notices issued under [Section 274](#) should satisfy the grounds, which he has to meet specifically. Otherwise, principle of natural justice is offended if the show cause notice is vague. Even in the matter of search case where penalty is levied under Explanation 5A to [Section 271\(1\)\(c\)](#), it was held by the Karnataka High Court that the show-cause notice under [Section 274](#) was defective as it does not spelled out the ground on which the penalty is sought to be imposed and consequently penalty imposed was cancelled. The decision of CIT V/s. Manjunatha Cotton Ginning Factory (supra) was further followed by the Karnataka High Court in the case of

*CIT V/s. SSA'S Emerald Meadows, (2016) 73 taxman.com 248 (SC) / dated 23.11.2015 (ITA 380/2015), the High Court has dismissed the appeal of the revenue by observing that the Tribunal has allowed the appeal of the assessee holding that the notice issued by the Assessing Officer under [Section 274](#) read with [Section 271\(1\)\(c\)](#) of the Act of 1961 was bad-in-law as it did not specify which limb of [Section 271\(1\)\(c\)](#) of the Act of 1961, the penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars. The Tribunal while allowing the appeal of the assessee, had relied on the decision of the Division Bench of Karnataka High Court decision in the case of CIT V/s. Manjunatha Cotton Ginning Factory (supra). It is further pointed out that the SLP filed by the Deptt. before the Apex Court on 5.8.2016 in the matter of CIT V/s. SSA'S Emerald Meadows (supra) was dismissed. In the case of CIT V/s. Suresh Chandra Mittal, (2000) 251 ITR 9 (SC), the Apex Court has upheld the decision of M.P. High Court wherein, in similar circumstances, it was held that the initial burden lies on the revenue to establish that the assessee had concealed the income or had furnished inaccurate particulars of such income. In the present case, in show-cause notice the Assessing Officer has not specified specifically charges, there was no such mention.*

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

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

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

4.6 In view of the **judgment of jurisdictional High Court** on issue of law (supra) the arguments canvassed by Ld. DR does not survive and needs no determination of same by us.

4.7 In the premises draw up by us we set aside the impugned order & allow the appeal of the assessee.

5 **Order**

5.1 In the result appeal of the assessee is allowed, penalty is deleted.

**pronounced in open court on 16.01.2026**

Sd/-

**(BHAGIRATH MAL BIYANI)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PARESH M JOSHI)**  
**JUDICIAL MEMBER**

**Indore**

Dated : 16/01/2026

Patel/Sr. PS

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

By order

Senior Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore