

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH KOLKATA

**Before Shri Rajesh Kumar, Accountant Member and
Shri Pradip Kumar Choubey, Judicial Member**

**ITA No.2110/Kol/2025
Assessment Year: 2020-21**

**Sanjay Kumar Khemka.....Appellant
3B & 3C, Savita Apartment,
Near Alpna Marset, Patliputra,
Patna - 800013..
[PAN: AGSPK8051D]**

vs.

DCIT, CC-3(4), Kolkata.....Respondent

Appearances by:

Shri A. K. Tibrewal, FCA, appeared on behalf of the appellant.

Shri S B Chakraborty, Addl. CIT, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 18, 2025

Date of pronouncing the order : January 19, 2026

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee is directed against the order dated 17.07.2025 of the CIT(A)-21, Kolkata (hereinafter referred to as the "CIT(A)") passed u/s 250 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2020-21.

2. Brief facts of the case are that in the case of the assessee, a search & seizure operation was carried out in the residential/registered office/business premises of "Private Coaching & Educational Institutions Group" of cases on 06.11.2019 and the assessee belonged to the group. Since the present assessment year was a search assessment year, the case was selected for compulsory scrutiny. The return of income for the A.Y. 2020-21 was filed by assessee on 11.02.2021 declaring total income of Rs.4,94,12,820/-. During the search operation, a cash amounting to Rs.80,00,000/- was found and the assessee was unable to reconcile the

cash and therefore, amount was seized. During the course of assessment proceedings, assessee offered cash of Rs.80,00,000/- as his income for the A.Y.2020-21 vide reply dated 23.09.2021. Hence, an amount of Rs.80,00,000/- was added back to the income of the assessee u/s 69A of the Income Tax Act'1961 and penalty of Rs.60,00,000/- u/s 271AAB of the Act was imposed.

3. On appeal, the ld. CIT(A) dismissed the appeal of the assessee.

4. Aggrieved and dissatisfied, the assessee is in appeal before us. At the time of hearing, the Ld. AR challenges the impugned order thereby submitting that the impugned penalty order dated 17.07.2025 passed under section 271AAB of the Act was without appreciating the fact that the said penalty order was itself illegal, null and void being passed in pursuant to a show cause notice dated 5th October, 2021 which was issued under section 274 r.w.s 271AAB of the Act and the said notice was evidently defective being not in accordance with law as it fails to point out the default for which the A.O. sought to impose penalty u/s 271AAB of the Act. The ld. AR drew our attention to the notice issued u/s 274 r.w.s. 271AAB dated 05.10.2021, which is as under:

To, SANJAY KUMAR KHEMKA 3B & 3C , SAVITA APARTMENT, NEAR ALPNA MARKET PATLIPUTRA PATNA 800013, Bihar India			
PAN: AGSPK8051D	Assessment Year: 2020-21	DIN & Notice No.: ITBA/PNL/S/271AAB/2021- 22/1036167557(1)	Date : 05/10/2021

Notice under section 274 read with section 271AAB of the Income Tax Act, 1961

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 authorised representative at **11:00 AM** on **20/10/2021** and show cause why an order imposing a penalty on you should not be made under section **271AAB** of the Income Tax Act, 1961.

If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative, you may show cause in writing on or before the said date which will be considered before any such order is made under section **271AAB** of the Income Tax Act, 1961.

4.1 The Id. AR in this respect has cited the following case laws:

- i. Shri Rahul Jain -vs- Deputy Commissioner of Income Tax ITA No.1219/Chandi/2024 (Chandigarh ITAT) dated 18.08.2025*
- ii. Greenex Chemicals Pvt. Ltd. -vs- Assistant Commissioner of Income Tax ITA No.657/Kol/2022 (Kolkata ITAT) dated 16.01.2023*
- iii. Sushil Kumar Paul -vs- Assistant Commissioner of Income Tax ITA No.2274/Kol/2019 (Kolkata ITAT) dated 15.12.2022*
- iv. Landcraft Developers Pvt. Ltd. -vs- Assistant Commissioner of Income Tax ITA No.1062/Del/2019 (Delhi ITAT) dated 08.01.2024*

5. Contrary to that, the Id. DR supports the impugned order.

6. We have considered the submissions of the counsels of the respective parties and perused the material available on record. We find that the Assessing Officer while issuing notice u/s 274 r.w.s. 271AAB

dated 05.10.2021 failed to specify the limb under while the penalty was proposed to be levied. We note that section 271AAB of the Act deals with penalty which consists of three contingencies and while issuing such penalty notice, the Assessing Officer should point out to the assessee as to under which of the three clauses, he chooses to proceed against the assessee and in this case, the Assessing Officer failed to do so. We therefore hold that the said penalty notice dated 05.10.2021 was a defective one and in fact no penalty can be imposed on the basis of such defective notice. We find reliance on the cited decision of the ld. AR in the case of *Greenex Chemcicals Pvt. Ltd. -vs- Assistant Commissioner of Income Tax (supra)* wherein the Tribunal held as under:

“8. We have considered the rival contentions and gone through the record. We find that the aforesaid issue raised by the assessee is duly covered by the decision of the Coordinate Bench of the Tribunal in the case of M/s. Vijayshree Autocom Ltd vs. DCIT in ITA No.2374&2375/Kol/2018 decided on 28.03.22, wherein, the Tribunal on the identical issue has deleted the penalty while relying upon the decision of the Hon'ble Madras High Court in the case PCIT vs. Shri R. Elangovan in Tax Case Appeal Nos. 770 & 771 and CMP No. 18581 of 2018 dt. 30/03/2021. The relevant part of the decision of the Coordinate Bench of Tribunal is reproduced as under:

“6. After hearing the rival parties and perusing the material available on record including the notice issued u/s 271AAB r.w.s. 274 of the Act dt. 31/03/2016, we find that the notice has been issue in a mechanical manner without specifying one of the three clauses uses under which the penalty was proposed to be levied. The ld. A/R before us challenged the very initiation of penalty proceedings u/s 271AAB as invalid and void ab initio on the ground that the initiation is itself by an invalid notice issued by the Assessing Officer. The ld. A/R submitted that the issuing a mechanical notice without application of mind is a substantive and patent error of law which goes to the root of the matter and is not curable at a later stage. The ld. A/R, therefore, prayed that the order of the ld. CIT(A) confirming the penalty deduction to the extent of 10% may kindly be set aside and the penalty order passed by the Assessing Officer u/s 271AAB may kindly be quashed as the very foundation is suffering from vices invalid notice. The ld. A/R in defence of his arguments relied heavily on the decision of the Hon'ble Madras High Court in the case PCIT vs. Shri R. Elangovan in Tax Case Appeal Nos. 770 & 771 and CMP No. 18581 of 2018 dt. 30/03/2021.

The ld. D/R, on the other hand, relied heavily on the order of the ld. CIT(A) by stating that the provisions provision of [Section 271\(1\)\(c\)](#) of the Act are quite different from provisions of [Section 271AAB](#) as the two penal sections deal with distinct and different issues altogether. The ld. D/R

submitted before us that the provisions of [Section 271\(1\)\(c\)](#) of the Act deals with the imposition of penalty on the particular charge whereas the provisions u/s 271AAB deal with the quantum of penalty. The ld. D/R, therefore, submitted that the order of the ld. CIT(A) may kindly be sustained.

7. We have perused the decision cited before us in the case of PCIT vs. Shri R. Elangovan (supra) and find that under similar facts the Hon'ble court has quashed the penalty order on the ground that it is based upon invalid penalty notice issued u/s 271AAB of the Act. The operative part is extracted below:

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

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

16. In so far as the decision of the Allahabad High Court in the case of Sandeep Chandak is concerned, the factual position is slightly different. This decision is for the principle that where the assessee, in the course of search, makes a statement, in which, he admits the undisclosed income and specifies the manner, in which, such income has been derived, then the provisions of [Section 271AAB](#) of the Act would automatically get attracted. There can be no quarrel over this proposition. But, once the provisions get attracted, it is incumbent on the part of the Assessing Officer to specify as to under which clause in [Section 271AAB\(1\)](#) of the Act, he intends to proceed against the assessee. In the instant case, in the absence of such material in the penalty notice, it has to be held that the notice is defective.

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

9. As the facts of the case before us are materially the same, we, therefore respectfully following the judgment of the Hon'ble Madras High Court in the case of PCIT vs. Shri R. Elangovan (supra) hold that the penalty order passed by the Assessing Officer is invalid and is accordingly quashed. The appeals of the assessee are allowed on legal issue.

10. The other issues raised on merits by the assessee are rendered academic in nature and, therefore, dismissed as such and are left open to be decided in future if need arises for the same.

11. In the result, both the appeals of the assessee are allowed.”

9. Since, the issue raised in this appeal is duly covered by the decision of M/s. Vijayshree Autocom Ltd (supra), therefore, respectfully following the same, we delete the impugned penalty.

6.1 In view of the above discussion, we hold that the notice issued u/s 274 r.w.s. 271AAB dated 05.10.2021 is invalid and penalty of Rs.60,00,000/- u/s 271AAB of the Act stands deleted.

7. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 19th January, 2026.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Pradip Kumar Choubey]
Judicial Member

Dated: 19.01.2026.

RS

Copy of the order forwarded to:

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

//True copy//

By order

Assistant Registrar, Kolkata Benches