

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AGRA (SMC) BENCH, AGRA**

BEFORE : SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

**ITA No. 518 & 519/Agr/2025  
Assessment Year: 2012-13 & 2013-14**

Yash Kumar Goyal Khatke Ka Bada, Lashker Dal Bazar, Gwalior, Gwalior	<b>Vs.</b>	DCIT/ACIT 2(1), Gwalior
<b>PAN : ADVPG5116D</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Nitin Goyal, Adv. & Sh. Amit Goyal, Adv.
Department by	Sh. Anil Kumar, Sr. DR

Date of hearing	16.02.2026
Date of pronouncement	19.02.2026

**ORDER**

Both these appeals have been filed by assessee against separate orders of the National Faceless Appeal Centre (NFAC), Delhi dated 17.09.2025 for the Assessment Years 2012-13 & 2013-14.

2. Since the issues involved in both these appeals are similar, the same were heard together and are being disposed of by this consolidated order for the sake of convenience and brevity. We take up ITA No. 518/Agr/2025 as a lead case.

3. In the ITA No. 518/Agr/2025, aggrieved with the above order, assessee is in appeal before ITAT, raised following grounds of appeal :

1. That the order of the Ld. CIT(A) Dated 17/09/2025 bearing DIN: ITBA/NFAC/S/250/2025-26/1080823187(1) is capacious, bad in law & deserves to be annulled.
2. That the learned CIT(A) erred in law and on facts in confirming the penalty of 23,44,980 levied under Section 271(1)(c) of the Income Tax Act, 1961, without appreciating that the assessment was completed under Section 153C, and no addition was made on the basis of satisfaction recorded under Section 153C.
3. That Ld. Cit(A) failed to consider the legal fact that once proceedings under Section 147 are abated due to initiation of Section 153C, the Assessing Officer cannot make additions based on the original reasons recorded under Section 147/148 unless they are supported by incriminating material found during the search.
4. That the penalty proceedings initiated under Section 271(1)(c) are invalid and unsustainable in law as the Assessing Officer failed to specify in the notice under Section 274 whether the penalty was for "concealment of income" or "furnishing of inaccurate particulars of income," thereby violating principles laid down in various judicial precedents of hon'ble court.
5. That the penalty is not leviable as the alleged error in computation of indexed cost of acquisition was a bona fide and inadvertent clerical mistake, which was voluntarily corrected by filing a revised return in response to notice under Section 148.
6. That the penalty order is vitiated by non-application of mind and mechanical satisfaction, as the AO merely reproduced the assessment findings without independent reasoning for levy of penalty.
7. That the penalty is not sustainable as the AO relied on deeming fiction under Section 50C to compute LTCCG, and penalty cannot be levied on additions made purely on legal presumptions.
8. That the learned CIT(A) failed to appreciate that the original assessment under Section 143(3) had already dropped penalty proceedings vide order dated 21/08/2015 on similar grounds, and the principle of consistency ought to have been followed.

9. That the order of the Ld. CIT(A) NFAC Dt: 17/09/2025 & the penalty order dated 14/06/2019 is bad in law as it was passed without affording adequate opportunity of being heard, and without considering the detailed explanation and documentary evidence filed by the appellant.

10. That the order of the Ld. CIT(A) NFAC Dt: 17/09/2025 & corresponding penalty order U/s 271(1)(c) dated 14/06/2019 & relevant quantum order U/s 153C / 143(3) dated 28/12/2018 are without jurisdiction. The penalty order as well as the quantum order are passed by the assessing officer who does not hold the valid charge to assessee the cases selected U/s 153A & 153C.

11. That the penalty is otherwise excessive, arbitrary, and deserves to be deleted in the interest of justice.

12. That the appellant craves the leave to add, alter, delete, modify any of the ground of appeal/s either before or during the course of hearing before this hon'ble bench.

4. In the ITA No. 518/Agr/2025, further raised following additional grounds of appeal:

That the penalty proceedings initiated under Section 271(1)(c) of the Income-tax Act, 1961 are void ab initio, in as much as the impugned penalty notices dated 29/12/2019 issued for A/y 2012-2013 fail to specify the precise charge-whether the penalty is sought to be imposed for "concealment of income" or for "furnishing of inaccurate particulars of income." The Assessing Officer has mechanically invoked both limbs of Section 271(1)(c) without striking off the irrelevant portion, thereby rendering the initiation of penalty proceedings legally unsustainable.

5. Assessee filed application for admission of above additional ground. This being jurisdictional issue, all the material facts already available on record. He prayed that the same may be admitted for adjudication. The Id. DR has objected for admission. After considering the submissions I am admitting the additional ground for adjudication.

6. Brief facts of the case are, the assessee filed its return of income for Assessment Year 2012-13 on 28.09.2012 declaring total income of Rs. 13,77,280/-. The case of the assessee was reopened after taking due approval and notice u/s 148 of the Income Tax Act, 1961 (in short 'Act') was issued on 28.02.2018. In response, the assessee filed return of income on 12.03.2018 declaring the same income as per original return of income. The case was reopened for the reason that the assessee has claimed LTCG of Rs. 15,74,350/- which was set off from the STCG arising from the sale of property sold by his minor son. It was noticed that the claim of the assessee is unjustified. Subsequently, there was a search and seizure proceeding initiated in the case of the Parbha vs. Rahul Group. Accordingly proceeding initiated u/s 148 of the Act was abated and proceedings u/s 153C of the Act was initiated. In the subsequent proceedings, the assessee has rectified the above mistake with the submission that due to mistake on the part of the office staff and accordingly, return was revised. Accordingly, penalty proceedings u/s 271(1)(c) of the Act were initiated for furnishing inaccurate particulars of income and accordingly, penalty of Rs. 3,44,980/- was levied.

7. Aggrieved with the above order, the assessee preferred an appeal before NFAC, Delhi and filed a detailed submissions. After considering

the details submissions, Id. CIT (Appeals) dismissed the appeal preferred by the assessee. Aggrieved, the assessee is in appeal before us.

8. At the time of hearing, Id. AR of the assessee brought to our notice the relevant facts on record and further he brought to our notice issued u/s 274 r.w.s 271(1)(c) of the Act and filed a copy of the same. In this regard, he submitted that the notice issued u/s 274 is defective. Therefore, the proceedings initiated u/s 271(1)(c) of the Act is bad in law and void ab initio. In this regard, he relied on decision of Hon'ble High Court of Karnataka in the case of CIT vs. Manjunatha Cotton & Ginning Factory [2013] 35 taxmann.com 250 (Karnatka)

9. On the other hand, Id. DR relied on the findings of lower authorities.

10. Considered rival submissions and material placed on record. I observe that at the time of hearing, Id. AR brought to our notice that notice issued u/s 274 of the Act is defective, for sake of brevity it is reproduced below.



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX  
DCIT/ACIT 2(1), GWL

To,  
YASH KUMAR GOYAL  
0,0 0,0 , 0 KHATKE KA BADA,LASHKER  
DAL BAZAR, GWALIOR 474009, Madhya Pradesh  
India

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PAN ADVPG5116D	Assessment Year 2012-13	Date: 29/12/2018	Notice No. ITBA/PNL/S/271(1)(c)/2018- 19/1014653041(1)
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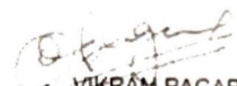
Notice under section 274 read with section 271(1)(c) of the Income Tax Act, 1961

Sir/ Madam,

Whereas in the course of proceedings before me for the Assessment Year 2012-13, it appears to me that you have concealed the particulars of income and furnished inaccurate particulars of such income.

You are hereby requested to appear before me, either personally or through a duly authorised representative at 11:00 AM on 14/01/2019 and show cause why an order imposing a penalty on you should not be made under section 271(1)(c) 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 271(1)(c) of the Income Tax Act, 1961.

  
VIKRAM PAGARIA  
DCIT/ACIT 2(1), GWL

11. From the above notice, I observe that the Assessing Officer has initiated proceedings on both the issue of concealed the particulars of income and furnished inaccurate particulars of the income since he failed to indicate on which limb, he has proceeded the initiate the penalty proceedings. The various courts have held that non indication of which limb of provisions of section, the penalty proceedings initiated are bad in law and void ab initio in the given case, he proceeded to initiate the

proceeding in violation of the provisions of section 271(1)(c) of the Act. In this regard, I relied on the decision of Hon'ble High Court of Karnataka the decision in the case of Manjunatha Cotton & Ginning Factory (supra).

12. Respectively, the following above decision I am inclined to allow the additional ground raised by the assessee.

13. Other grounds raised by the assessee are not adjudicated at this stage.

14. In ITA No. 519/AGR/2025, since facts and circumstances of the case are exactly identical to facts and circumstances of the case in ITA No. 518/AGR/2018, any findings and direction contained therein shall apply mutatis mutandis to ITA No. 519/AGR/2025.

15. In the result, both appeals filed by the assessee are allowed.

***Order pronounced in the open court on 19.02.2026***

**Sd/-**

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

**Dated:19.02.2026**

\*Gankesh Kumar, Sr. PS

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra