

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "B", MUMBAI**

**BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER)**

AND

**SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)**

I.T.A. No. 949 to 952 /Mum/2014

(Assessment Years: 2005-06, 2006-07, 2007-08 & 2008-09)

ACIT, Cent.Cir.47, Mumbai		Bharat Ruia, HUF Prop P.R. International, Ruia House, 19, Bhausahab Hire Marg, Malbar Hill, Mumbai-6
		PAN : AACHB3596E
(Appellant)		(Respondent)

I.T.A. No. 750 to 753/Mum/2014

(Assessment Years: 2005-06, 2006-07, 2007-08 & 2008-09)

Bharat Ruia, HUF Prop P.R. International, Ruia House, 19, Bhausahab Hire Marg, Malbar Hill, Mumbai-6		ACIT, Cent.Cir.47, Mumbai
		PAN : AACHB3596E
(Appellant)		(Respondent)

Assessee by	None
Revenue by	Shri Suman Kumar

Date of hearing : 11-01-2017

Date of order : 08-02-2017

**ORDER**

**Per Bench**

These appeals pertain to same assessee involving identical issues, therefore, these were heard together and are disposed of by this common order.

2. It is noted that these appeals were earlier fixed for hearing on 18-02-2016 and the case was adjourned at the request of the assessee's counsel, vide letter dated 15-02-2016. The next date of hearing was fixed for 24-08-2016. On this date also, hearing was adjourned at the request of the assessee's counsel vide letter dated 24-08-2016. The next date of hearing was 11-01-2017. This date was duly noted on the adjournment letter dated 24-08-2016 by the partner of M/s Rajiv & Associates i.e. person present on the date of hearing on 24-08-2016.

3. It is noted that as none appeared on behalf of the assessee on the date of hearing i.e. 11-01-2017. Thus, it appears that assessee is not interested in representing these appeals. Under these circumstances, we have no other option but to proceed *ex-parte* qua the assessee.

4. We shall first take up appeal for A.Y. 2005-06 in ITA No.750/Mum/2014 filed by the assessee on the following grounds:-

***"Ground No 1:-***

*On the facts and in the circumstances of the case and in law, the learned Deputy Commissioner of Income-tax, Central Circle, Mumbai erred in initiating penalty proceedings and erred in levying penalty u/s 271(1)(c) amounting to Rs. 45,37,808/-. The appellant prays that the penalty levied may kindly be cancelled.*

***Ground No 2:-***

*The learned Deputy Commissioner of Income-tax has failed to establish that the amounts offered constituted the concealed income of the Assessee and therefore, the levy of penalty is entirely unjustified as he has merely relied on the offer made by the Assessee to buy peace.*

***Ground No 3:-***

*Without prejudice to the above it is submitted that the penalty imposed is void abinitio because the DCIT could not have been satisfied about the Assessee having concealed any income as the Assessee was not found to be the owner of any income.*

***Ground No 4:-***

*Without prejudice to the above it is submitted that the provisions of the section 271 AAA (2) & (3) would apply as*

*the search was caused after the 1<sup>st</sup> day of June, 2007 and statement has been made under section 132(4). Hence no penalty is eligible under section 271 (1) (c).*

*Ground No 5:-*

*The learned Deputy Commissioner of Income-tax has ignored the facts of the case, which clearly demonstrate that the assessee had voluntarily agreed in the course of statement under section 132(4) to be taxed on certain amounts with a view to avoid vexatious litigation and had cooperated by making a statement that he has agreeable to being taxed on the disclosed amount.*

4. The brief background and facts of the case narrated in the order of Ld. CIT(A) is reproduced here under:

*“A search & seizure action u/s 132 of the Act was carried out at the residence and business premises of Phoenix Group on 20/02/2008 by DDIT(Inv) Unit-IV(2), Mumbai. The Phoenix Mills Ltd. (PML), the flagship company of the group was engaged in the business of manufacturing and distribution of cotton textiles and also in the business of real estate development. Phoenix Mills Ltd. group was controlled and managed by Ruia family. Hence, the business concerns and the residences of the Ruia was also covered u/s 132/133A of the Act. An order u/s 153A rws 143(3) of the Act dated 29.12.2010 was passed in the case of the assessee. During the course of assessment proceedings, additions were made on the following issues and penalty proceedings u/s 271 (1) (c) of the Act were initiated;*

*(i) unexplained cash deposits in account of M/s Phulchand Sons Investment amounting to Rs.99,28,000/- [disclosed during search in statement u/s132(4)],*

*(ii) Unaccounted cash deposits in the accounts of the employees by the Karta of the Bharat Ruia (HUF) amounting to Rs,36,42,000/- (not disclosed during search, however, detected in assessment proceedings). The employee accounts used by Mr. Bharat Ruia, Karta of the assessee HUF are as under:-*

<i>Sr.No</i>	<i>Name of the person</i>	<i>Bank</i>	<i>Entity Name</i>	<i>Bank A/c No.</i>	<i>Cash Deposit</i>

1.	Rajesh Sharma	Dena Bank	Akash Securities	125661	44,99,500
2	Vinod Kode	Corporation Bank	Vinod Enterprises	073	2,25,72,542
3	Gee Vergesh	Dena Bank	Mayank Goel	125662	67,90,000
4	Rajesh Sharma	Corporation Bank	Phulchand Sons Investment	Ca053	99,28,000

The amounts were deposited in the accounts over different periods as discussed in the penalty order. The entries at sr no.1 to 3 were discovered during the assessment whereas the entry no.4 was disclosed by the assessee at the time of search action. Although the assessee disclosed the amount of undisclosed income in search (issue no-(i) for Rs.99,28,000/-), the penalty proceedings were initiated by the AO on the ground that **the** assessee would not have disclosed the income in absence of search. The other amount (issue no-(ii)) of Rs.36,42,000/- was detected during the assessment proceedings and therefore, the penalty proceedings were initiated by the AO on the ground that the assessee failed to disclose the said amount in the return of income. Subsequently, penalty order u/s 271(1)c) of the Act was passed in the appellant's case for AY 2005-06 on 30.6.2011 levying penalty of Rs.90,75,616/-. In the penalty order, the AO discussed the basis of the disclosure and the basis of addition on the above issues in the search assessment completed. In respect of the disclosure of Rs 99,28,000/- made by the assessee, it was stated by the AO that during the course of search action, a statement u/s 132(4) of the Act was recorded of Mr. Rajesh Sharma, employee on oath. In the statement, Mr. Sharma explained the modus operandi used by Mr Bharat R. Ruia. While Mr. Bharat R. Ruia was confronted with the statement of Mr. Rajesh Sharma, the assessee made a disclosure of Rs.9928000/- and adhered to the same in the return filed u/s 153A of the Act. In respect of addition of Rs.36,42,000/-, the AO stated that Shri Bharat R Ruia was engaged in dealing in shares in the name of his employees. To investigate the issue a statement on oath of Mr. Rajesh Sharma, an employee of Mr Bharat Ruia, was recorded on 19.3.2008 at the time

*of operation of prohibitory order at corporate office of M/s. Phoenix Mills Ltd. at 162, Senapati Bapat Marg, Lower Parel, Mumbai. Mr. Rajesh Sharma also stated in his statement that two bank accounts, one current bank account No 073 in Corporation Bank, Lower Parel Branch, Mumbai and second current bank account No 125662, Dena Rank, Lower Parel Branch, Mumbai are benami bank accounts of Shri Bharat Ruia. These accounts were opened by Shri Bharat R. Ruia in the name of M/s. Vinod Enterprises and M/s Mayank Goel. Thus, it is evident that Shri B.R. Ruia was having number of bank accounts. These accounts were effectively controlled and managed by Shri Bharat R. Ruia only. Therefore, the transactions reflected in such bank accounts and demat accounts pertain to him. Shri Bharat R. Ruia was confronted with above mentioned statement of Mr. Rajesh Sharma on 16.4.2008. When questioned specifically, Shri Bharat R. Rula accepted in his statement u/s 132(4) of the Act recorded on 16.4.2008 that M/s. Rajesh Investment and M/s Phulchand Sons Investment were two concerns, which were operated by him only through his employee, Shri Rajesh Sharma. The assessee made certain disclosure during the search proceedings. The details of which were reproduced in the penalty order are as under:*

<i>Sr.No.</i>	<i>A.Y.</i>	<i>Amount</i>	<i>Particulars</i>
<i>1</i>	<i>2005-06</i>	<i>99,28,000</i>	<i>Cash Deposits in the accounts of M/s Phulchand Sons Investment</i>
<i>1</i>	<i>2007-08</i>	<i>6,54,70,275</i>	<i>Share Trading loss through Rajesh Investments</i>
<i>2</i>	<i>2007-08</i>	<i>30,96,263</i>	<i>Income from Share transactions in the account of M/s Phulchand Sons Investment</i>

*The other bank accounts were not explained by the assessee during search proceedings. The AO issued notices to the banks for providing the copies of bank statements and bank account opening forms etc. The verification of these accounts suggested that the cash was deposited into the accounts. The three persons namely Mr. Gee Vergesh, M. Vinod Kode & Mr. Rajesh Sharma*

were required to present themselves before the AO, but no person attended. The AR of the assessee informed that the persons had left the company. During the assessment proceedings, a show cause was issued to appellant requiring to explain the cash deposits which are as follows:

Sr No.	Name of the Person	Bank	Entity Name	Bank A/c	Cash Deposit
1	Rajesh Sharma	Dena Bank	Akash Securities	12561	44,99,500
2	Vinod Kode	Corporation Bank	Vinod Enterprises	073	2,25,71,542
3	Gee Vergesh	Dena Bank	Mayank Goel	125662	67,90,000

In reply, the assessee submitted that Mr Rajesh Sharma was an employee of the assessee company and the other two persons were not related to the assessee. It was further submitted that the bank accounts standing in the name of Shri Rajesh Sharma were not related to the assessee and the assessee already offered the transactions in case of M/s. Rajesh Investments and M/s. Phulchand Sons Investment at the time of search as these were accepted to be operated by the assessee. However, the assessee offered the following amounts in respect of the above transactions without prejudice to the contention that they did not relate to the assessee and in order to avoid prolonged litigation and to buy mental peace with an understanding that no penalty will be initiated / levied:

Assessment Year	Mayank Goel	Akash Securities	Vinod Enterprises
2005-06	5,000	5,000	36,32,000
2006-07	67,85,000	44,94,500	1,37,75,555
2007-08	--	--	--
2008-09	--	--	51,63,987
Total	67,90,000	44,99,500	2,25,71,542

Sharma referred to all the bank accounts in which, cash was deposited. As a result of the same, Shri Bharat Ruia made certain disclosures in the respective assessment years

*The AO did not accept the submission of the assessee for the following reasons:-*

- (i) During the course of search action, statement of Mr. Rajesh Sharma was recorded under oath u/s 132(4) of the Act, which was also confronted with Mr. Bharat Ruia, Karta of HUF during the search proceedings wherein Mr. Rajesh Sharma referred to all the bank accounts in which cash was deposited. As a result of the same, Shri Bharat Ruia made certain disclosures in the respective assessment years.*
- (ii) The bank account statements of the three accounts were not available at the time of search which were obtained u/s 133(6) of the Act during the assessment proceedings.*
- (iii) The request to call for cross examination was rejected by the A.O on the ground that the assessee did not raise any objection to the statement of Shri Rajesh Sharma, which was already confronted to the assessee at the time of search. It was the onus of the assessee to show as to how the statement of Mr. Sharma, the employee was wrong if it was so, as the assessee was also accorded an opportunity produce Mr. Sharma, who was employed with the assessee. The assessee, however, accepted the cash deposits in 'the bank accounts as undisclosed business income*

*In view of the above, the AO added the cash deposits in respective assessment years as undisclosed income of the assessee. For the year under consideration, the addition on this count was Rs 36,42,000/-. During the penalty proceedings, the assessee was asked to explain as to why penalty u/s 271(1)(c) of the Act should not be levied. In reply, the assessee submitted in respect of undisclosed income of Rs 99,28,000/- that the same was offered by the assessee in the return of income filed u/s 153A of the Act under the head income from business over and above the normal profit derived from profit & loss account, on which due taxes were paid. It was, therefore, contended that the assessee should not be penalized under the provisions of section 271(l)(c) of the Act. With respect to the other issue of addition of Rs 36,42,000/-, the assessee submitted that the accounts in which cash deposits were found did not belong to the assessee and the assessee was not controlling these accounts. However, the assessee accepted these deposits*

*under protest and to buy peace of mind and avoid further litigation under an understanding that penalty provisions would not be invoked as the income was being accepted under protest and without prejudice to the fact that the cash deposits did not belong to the assessee. The assessee also submitted that the provisions of section 271(1)(c) of the Act will have to be read with section 271AAA of the Act and intention of section 271AAA of the Act should be considered. The A.O did not accept the submissions of the assessee for the following reasons:*

- (i) The search was conducted on 20.2.2008. The financial year with respect to the amount of Rs. 99,28,000/- is 2004-05 Thus, the assessee had no intention to disclose the amount. The detection 01 cash deposits in the account of the employee came to light only after search action. Therefore, it is not a voluntary compliance of the assessee. The disclosure u/s. 132(4) of the Act, therefore, has no character of voluntary disclosure.*
- (ii) The cash deposits in the bank account of the employee Shri Rajesh Sharma were substantiated by Shri Rajesh Sharma himself under oath u/s 132(4) of the Act that the same were deposited in the bank account which was opened and operated by Bharat Ruia (HUF).*
- (iii) Shri Rajesh Sharma, in his statement u/s 132(4) of the Act revealed that there were other bank accounts of Vinod Kode and Gee Varghese in his statement.*
- (iv) The transactions in the bank account of Shni Vinod Kode and Gee Varghese were detected by the enquiry made by the AO and not by the voluntary disclosure of the assessee,*
- (v) The question raised by the assessee to cross examine Shri Vinod Kode and Shri Gee Varghese carries no weight because the department had shown the bank account copy of these persons and issued show cause why the amounts contained in the bank account not be treated as the assessee<sup>t</sup>'s income The assessee did not produce Vinod Kode or Gee Varghese although they were employed with him.*
- (vi) The assessee deposited his unaccounted cash amounting to Rs. 99,28,000/- in the account of M/s. Phulchand Sons investment, in order to avoid its own tax liability,*
- (vii) The additions to the total income in the assessment were made on the basis of the statement u/s 132(4) and on the specific findings and quantification of the concealed income The quantification was purely*

*based on the crystal clear facts that the bank statements were obtained and cash deposits were quantified-*

- (viii) There had been deliberate attempt on the part of the assessee to deposit cash into these accounts. The assessee also admitted to have utilized the accounts for the purpose of booking bogus losses into trading account, The statement dated 16.4.2005 of Mr Bharat Ruia states at answer No.9 that 'this loss had been booked by non genuine oft market transactions between R.R International & M/s Rajesh Investments as per pre-defined arrangement, This proves that the assessee deliberately and willfully resorted to tax evasion,*
- (ix) The bank accounts opened in the name of the employee were Introduced by another employee for e.g. the account of Vinod Enterprises at Corporation Bank was introduced by M/s Phulchand Sons Investment The assessee could not prove how the cash did not belong to him which was deposited in these accounts.*
- (x) The cash was deposited into these accounts over a period of AYrs.2005-03 to 200-09, Thus there was continuous and repeated attempt on the part of the assessee to defraud the Revenue.*
- (xi) The assessee's explanation during the course of penalty proceedings had no strength because the explanation relates to section 271AAA whereas the penalty leviable relates to section 271(1)(c) of the Act.*

*Therefore, the AO levied penalty u/s. 271(1)(c) of the Act amounting to Rs.90,75,316/- @ 200% of the tax sought to be evaded."*

5. In the appeal order, Ld. CIT(A) has noted that detailed submissions were made to challenge the levy of penalty amounting to Rs.90,75,616 levied @200% of the tax sought to be evaded by the assessee. It was submitted that levy of penalty @200% is not justified at all as no concealment was done by the assessee. Therefore, without prejudice to other submissions, it should be reduced to 100%. Thereafter it was also submitted at length that levy of penalty is not justified at all and it should be deleted. The assessee made detailed submissions to argue on the point that perusal of statements recorded of the assessee and Shri Rajesh Sharma would reveal that there are many gaps in the

statements, and therefore, no concealed income could be proved beyond doubt. Therefore, levy of penalty was highly unjustified.

6. The assessee further submitted that that he had voluntarily made the disclosure of Rs.99,28,000/- even though no incriminating material was found during the search proceedings and the departmental heavily relied on such declarations made by the appellant to make additions in the assessment order passed u/s.143(3) r.w.s. 153A of the Act, The department has no corroborative / clinching evidence by way of seized material to prove that such incomes were concealed by the assessee and the AO is simply of the view that the same was unearthed only to due to search proceedings and hence penalty must be levied. The assessee relied upon the decision of Hon'ble Supreme Court in the case of CIT vs. Khoday Eswarsa and Sons 83 ITR 69. With regard to the penalty on the additions made in the assessment proceedings, the it was submitted that he had entered into transactions with M/s.Vinod Enterprises and Mr. Mayan Goel and the assessee had debit balances i.e. money receivable from the aforesaid parties. The assessee submitted that even if it is believed that the alleged bank accounts in which cash deposits were made of the above concerns were actually of the assessee, then the money deposited in these accounts should not have been taxed, as it is only the earlier debit balance which is now getting squared-up. The assessee therefore submitted that with no evidence was available to suggest any concealment of income, the levy of penalty was not justified.

7. Ld.CIT(A) considered all the submissions of the assessee and also considered the orders passed by the AO, i.e. assessment order as well as penalty order and thereafter it was concluded by him that levy of penalty

by the AO was justified. But he reduced the penalty from 200% to 100%. Relevant part of order of Ld. CIT(A) is reproduced hereunder:-

*“9.0 I have carefully examined the facts of the case, the stand taken by the Assessing Officer in the penalty order, the grounds of appeal and the written submissions filed by the a<sup>p</sup>pellant during the appeal proceedings.*

*9.1 During the A.Y.2005-06, the appellant has admitted undisclosed income of Rs.9928,000/- in the statement recorded u/s.132(4) of the Act and followed it by disclosing the same in the return of income filed in response to notice u/s.153A of the Act. The admission of undisclosed income by the appellant is the Outcome of action u/s. 132 of the Act. The statement recorded from Mr,Rajesh Sharma, the employee of Mr.Bhrat Ruia evidences that the appellant (Karia of HUF) was dealing in shares in the names of his employees. During the course of search many bank accounts and huge deposits in these bank accounts were discovered. It was also detected that Mr. Bharat R. Ruia has been operating certain demat accounts only with a view to create bogus losses in the books of account of M/s. BR. International, a proprietary concern of Mr.Bharat R Ruia. The relevant statement recorded from Mr. Rajesh Sharma is reproduced as under for convenience:*

*“Q4: Since, when you are working in M/s. B.R. International?*

*Ms. I am working in the firm M/s. B.R.international, for the last six years.*

*Q.5: During the course of search action, it has been found that there are two bank accounts, in the name of M/s.Rajesh Investment (Account No.C8CA 229) and M/s.Phulchand Sons Investments (Account NO. CA 053) in Corporation Bank, Phoenix Mills Compound, Lower Parel, Mumbai. There are significant cash deposits in those honk accounts, whereas you have stated that your main source of income is from salary and saving bank account interest. Please explain for what purpose these accounts have been opened and what kind of transactions were carried out through these accounts.*

*Ans. I am not aware of the nature of the transactions carried out in these bank accounts. I am only signing the cheques and depositing the cheque/cash, as per instruction of Shri Bharat Ruia. These accounts have been opened at the instruction of Shri Bharat Ruia. The transactions appearing in these two bank accounts do not pertain to me at all. These bank accounts are mainly used for the purpose of share transactions.*

*Q.6. Please state, to whom the transactions appearing in above mentioned two bank accounts pertain?*

*Ans. These bank accounts are being operated as per the instructions of Shri Bharat Ruia only. I do not have the means and resources for large transaction appearing in these bank accounts. These bank accounts are benami accounts of Shri Bharat Ruia.*

*Q.7: Please provide details of any other bank account, which is being operated by you at the instruction of Shri Bharat Ruia or other persons?*

*Ans. The details of such bank accounts in the name of my proprietary business concerns are as under,*

- (i) M/s. A.Kash Securities, current account No. 125611 - Denak Bank, Lower Parel Branch, Mumbai.*
- (ii) M/s. Rajesh Investment, current account No. CBCA-229, Corporation Bank, Lower Parel Branch, Mumbai.*
- (iii) M/s. Rajesh Investment, current a/c. No.008610110000, Bank of India, Stock Exchange Branch, Mumbai.*

*Here, I would like to state that these bank accounts are not shown in my return of income as these bank accounts are being operated at the instruction of Shri Bharat Ruia. Further, whatever amounts deposited in bank accounts are not belonging to me but belonging to Shri Bharat Ruia. The above mentioned concerns are being operated by Shri Bharat Ruia using my name. I am only an employee of M/s. B.R. International and working as an Accountant in this office.*

*Q.8 Please provide details of all your demat accounts and explain the sources of acquisition of the shares in such accounts.*

*Ans. The demat accounts operated by me at the instruction of Shri Bharat Ruia are as under:-*

- (i) M/s Rajesh Investment, Kotak Securities Ltd, Nariman Point Branch, a/c No.12900315.*
- (ii) M/s Rajesh Investment, Oracle Securities Pvt. Ltd, a/c No. Gurunanak Road, Banda, Mumbai, a/c No.120305000000722.*

*in respect of the source of the acquisition of the shares reflected in those accounts, I would like to state that all transactions in these accounts are off market transactions, Almost all transactions of shares through these demat accounts have been done with M/s B.R. international only. There is no receipt or payment of any sum in respect of such share transactions with M/s. B.R. International. The amounts are shown, as outstanding. These share transactions with M/s. B.R. international through my demat accounts have been carried out as per direction and instruction of Shri B.R. Ruia*

*Q.9.- Please explain the modus operandi of operating the current bank count and demat account opened in name of your proprietary concern?*

*Ans All above the current bank accounts and demat accounts have been opened in my name but I have never done any transaction of depositing or withdrawing the money in these accounts. I have handed over the cheque books of these bank accounts and delivery instruction books of my demat accounts to Shri BR. Ruia. These cheque books / delivery instruction books are signed, whenever required by B.R.Ruia, by me without mentioning the name of payee, amount and date. After filing the relevant details, the cheque / delivery instructions are deposited. These cheque books / delivery instruction books are exclusively handled by Shri B. R. Ruia on his own. I have nothing to do with these cheque books as all money deposited in these bank account belongs to Shri B. R. Ruia from demat account, you Can see that (here is profit in my concerns on share transaction in the hands of M/s. B.R. International. The above mentioned demat accounts are, therefore, used for the purpose of booking the losses in the books of*

*M/s, B.R. International in the return of income. As slated earlier, / have not received any payment in cash I cheque from MIs. B. R. International / Shri B. R, Ruia, on account of such profit. Thus, the entire amount has been shown as outstanding in the books of Ws. B. R. International. Here, I would like to State that I have never maintained any books of account for any financial year for my above concerns, The whole arrangement of share transaction in my demat accounts have been done by Shn B.R. Ruia.*

*Q. 10: Please give the details of all other such bank accounts / demat accounts, which have been opened by Sh. BR. Ruia in the name of other person / concerns and which are being managed I arranged by him?*

*Ans. The bank accounts opened by Sh. B.R. Ruia in The name of other person which are being managed/handled by him are as under.*

- (I) Shni Vinod Kode, Proprietor of MIs Vinod Enterprises, current bank account No. 073 in Corporation Bank, Lower Parel Branch, Mumbai.*
- (II) (ii)S/ui Gee Vergesh. P'oprietor of M/s. Mayank Goel, current bank a/c. No. 125662, Dena Bank, Lower Parel Branch, Mumbai,*

*Hero, I would like to state that the modus operandi stated in earlier questions is entirely applicable in the case of above persons since the above said bank accounts are opened by the said persons but managed and arranged by Shri B, R. Ruia."*

*9.2 Shri Rajesh Sharma also stated in his statement that two other bank accounts, one current bank account no.073 with Corporation Bank, Lower Parel Branch, Mumbai and second current bank account no.125662, Dena Bank, Lower Parel Branch, Mumbai are also benami bank accounts of Shri B.R. Ruia. These bank accounts have been opened by Shri Bharat R. Rua in the name of M/s.Vinod Enterprises and Mr.Mayank Goel, Thus, **it is** evident that Shri B.R. Ruia is having number of bank accounts which are effectively controlled and managed by Shri Bharat R Ruia only. Therefore, the transactions reflected in such bank accounts and*

*demat accounts pertain to him.*

*9.3 Mr. Bharat R. Ruia was confronted with the above statement recorded from Mr Rajesh Sharma. In the statement recorded on 16.4.2008 u/s.132(4) of the Act, Mr Bharat R Ruia admitted undisclosed income of Rs785.03 Lacs. The relevant statement of Mr. Bharat R Ruia in response to Q. No. 9 of the statement recorded u/s.132(4) of the Act on 16.4.2008 is given as under:*

*"Q During the course of operation of prohibitory order at corporate office of MJs.PML at 462, Senapati Bapat Marg, Lower Parel, Mumbai on 19.03.2008, a statement on oath of Shri Rajesh Sharma, your employee, was recorded. The statement shows that you have been operating several business concerns In the name of other persons including your employees and close relatives. The effective control of such concerns lie with you. The funds have been deployed by you directly or indirectly in these concerns. Two of such concerns are M/s. Rajesh investment and MIS. Phulchand Sons Investment in the name of one of your employees, Shri Rajesh Shama. In his statement on oath recorded on 19.03.2008, Shri Rajesh Sharma has stated that Shri Bharat Ruia is real owner and beneficiary of transactions carried out in the name of above concerns and he acts as per the instructions of Shri Bharat Ruia. In this regard, please provide details of all such business entities / concerns, which have been operated by you during the seven years in the name of other persons along with the details of transactions, in relation to MIs. Rajesh International and M/s, Phulchand Sons Investment,, please provide complete details regarding nature and quantum of transactions along with details of income not offered for ax due to such arrangements?"*

*Ans. M/s. Rajesh Investment and Ws. Phulchand Sons Investment are two concerns which have been operated by my employee Rajesh Sharma as per my instructions. The transactions undertaken in M/s. Rajesh Investment have resulted into generation of non-genuine loss in books of M/s.B.R. International to the tune of Rs. 654. 79 lacs during A. Y.2007-08. This loss had been booked by way of non genuine off market share transactions between M/s.B.R. International*

*and M/s. Rajesh Investment as per predefined arrangement. Therefore, I, in the capacity of Karta of B.R. Ruia (HUF), proprietor of M/s B.R. International hereby declare The said non-genuine loss of Rs. 654 79 lacs as undisclosed income for The A. Y2007-08 in the hands of M/s.,B.,R. International over and above The regular income. I would pay the taxes due on such additional income disclosed by me.*

*M/s. Phulchond Sons investment is also engaged in the business of share trading, During A. Y2005-06 an amount of Rs.99.28 lacs was deposited in cash in the bank accot.nl M/s.Phulchand Sons Investment by M/s B.R. International, This cash deposited represent the unaccounted income in the hands of MIs B.R. International as sources, of such cash deposit cannot be explained. Therefore, I, in the capacity of Karta of BR. Ruia (HUF), proprietor of BR. International hereby declare the said cash deposits of Rs. 99.28 lacs as undisclosed income of MIs. B.R. International for the A. Y2005-06 over and above the regular income. I would pay the taxes due on such additional income disclosed by me.*

*During the A.Y 2007-08, M/s Phulchand Sons Investment has transacted in shares and earned an income of Rs. 30.96 lacs. The said income has not been offered for lax by MIs Phulchand Sons Investment. In light of the statement of Shri Rajesh Sharma and the facts discussed above, the said income is hereby being offered as undisclosed income in the hands of M/s.B.R. International. Therefore, I, in the capacity of Karta of B.R. Ruia HUF, Proprietor of B.R. International, hereby declare the amount of Rs.30.28 lacs as undisclosed income of M/s BR. International for the A. V 2007-08 over and above the regular income. I would pay the taxes due on such additional income disclosed by me....."*

*Thus, disclosure made by Ws. Bharat Ruia u/s. 132(4) in hands of M/s.B.R. international under venous heads is as under:*

S . N .	Issue involved	A.Y. 2005-06 Rs. In lacs	A.Y. 2007-08 Rs.in lacs
1	Purchase of no genuine loss from M/s Rajesh Investment	-	654.79
2	Unexplained cash deposits in cash of M/s Phulchand Sons Investment	99.28	-
3	Undisclosed income from share transactions in case of M/s Phulchand Sons Investment	-	30.96
	Total year-wise disclosure	99.28	685.75

9.4 From the above admission, it can be seen that the appellant admitted undisclosed income of Rs.99.28 lacs for the A.Y.2005-06 and accordingly filed the return of income u/s.153A of the Act declaring total income of Rs.25,10424/-. In this case, the appellant filed the original return of income and the same was assessed u/s.143(3) of the Act on 28 12.2007. In the original return of income the appellant did not disclose the additional income of Rs.9.28 lacs now disclosed in response to notice issued u/s.153A of the Act. The disclosure made by the appellant is due to the evidences discovered during the course of search. If there was no search action in the use of the appellant he would not have filed the return of income admitting the undisclosed income. The Hon<sup>1</sup>ble Punjab & Haryana High Court in the case of Prem Pal Gandhi Vs. CIT (2001) 335 ITR 23 (P&H) upheld that where revised return, showing higher income is filed after detection of concealed income by the Department, imposition of penalty would be justified. Concealment takes place on the date when return s filed without disclosing the particulars of income of that year as

held by the apex court in the case of Brijmohan-vCIT 120 ITR 1 5C In this case, the original return of income was filed without disclosing the income detected during the course of search u/s.132 of the Act and this Income was later disclosed in the return of income filed in response to the notice issued u/s.153A of the Act, consequent to search action u/s.132 of the Act, thereby establishing the concealment.

9.5 During the course of assessment proceedings on the basis of the information provided by Mr. Rajesh Sharma in connection with the bank accounts in Dena Bank and the Corporation Bank in the statement recorded u/s.132 (4) of the Act on 19.3.2008 as referred above (refer Q. No, 7 &10 of the statement), the assessing officer obtained certain bank account details u/s.133(6) of the Act and had noticed huge cash deposits in such accounts The details are as under:-

S r . N o .	Name of the Person	Bank	Entity Name	Bank A/c	Cash Deposit
1	Rajesh Sharma	Dena Bank	Akash Securities	125661	44,99,500
2	Vinod Kode	Corporation Bank	Vinod Enterprises	073	2,25,71,542
3	Gee Vergesh	Dena Bank	Mayank Goel	125662	67,90,000
				Total	3,38,61,042

9.3 The appellant was requested to explain the sources of the credits. Though the appellant feigned ignorance about these accounts, however he admitted the following income:-

Assessment Year / Party's name	Mayank Goel	Akash Securities	Vinod Enterprises
2005-06	5,000	5,000	36,32,000
2006-07	67,85,000	44,94,500	1,37,75,555
2007-08	-	-	-
2008-09	-	-	51,63,987
Total	67,90,000	44,99,500	2,25,71,542

9.7 As against the above admission, the assessing officer

*brought to tax the following sums:*

Assessment Year / Party's name	Mayank Goel	Akash Securities	Vinod Enterprises	Total
2005-06	5,000	5,000	36,32,000	36,42,000
2006-07	67,85,000	44,94,500	1,37,75,555	2,50,55,055
2008-09	-	-	51,63,987	51,63,987
Total	67,90,000	44,99,500	2,25,71,542	3,38,61,042

9.8 The appellant has admitted Rs.36,32,000/- for the A.Y.2005-06 during the assessment proceedings. However during the appellate proceedings, the appellant argued that the penalty should not be imposed as the said accounts do not belong to him. The appellant also submitted that no opportunity of cross examination was given to him. The appellant's contentions are not acceptable. The admission of undisclosed income of Rs 785.03 lacs in the statement recorded from Mr. Bharat R. Ruia on 16.4.2008 is similar to the facts and circumstances emanating out of cash deposits of Rs.3,38,61,042/- (Rs.36,42,000/- for the A.Y.2005-06) discovered during the course of assessment proceedings. The only difference is that the first admission by Mr. Bharat Ruia (Rs.785.03 lakhs) was during the course of search where as the subsequent developments have emanated from the enquiry conducted at the time of assessment proceedings. Though the enquiry was conducted **at** the time of assessment proceedings but the entire enquiry was the fallout of the statement recorded from Mr. Rajesh Sharma who has given the details of the bank accounts in Dena Bank and the corporation Bank (refer to Q Nos, 7 & 10) at the time of statement recorded from him u/s 132(4) of the Act on 19.3.2008. The appellant cannot feign ignorance about these accounts more so during the course of assessment proceedings the appellant also admitted the deposits as undisclosed income. The appellant also did not contest the said additions in appeal and the assessments have become final. These facts reveal the culpability of the appellant **in** concealing the income. Therefore the levy of penalty the Act is justifiable."

8. We have gone through the orders passed by the AO as well as the aforesaid detailed findings of Ld. CIT(A). It is noted that it has been

examined in detail by the Ld. CIT(A) that from the statements recorded of Shri Rajesh Sharma as well as the assessee it was clear that assessee was operating several business concerns in the name of other persons including assessee's employees and close associates and was maintaining various bogus bank accounts, through which unaccounted income was generated regularly. We find that findings have been recorded by the Ld. CIT(A) on the basis of facts and material held on record. Nothing has been brought before us to controvert or negate these factual findings. Under these circumstances, we find it appropriate to uphold the order of the Ld. CIT(A). Grounds 1 to 3 & 5 are dismissed.

**9. Ground 4:** In this ground, the assessee has contended that no penalty was exigible u/s 271(1)(c) since provisions of sections 271AA(2) & (3) would apply as the search was carried out after 1<sup>st</sup> day of June, 2007 and statement was made u/s 132(4).

**10.** In this ground, it is claimed that the assessee was exempt from levy of penalty under provisions of sections 271AAA (2) & (3) of the Act. It is noted that this issue has also been decided by Ld. CIT(A) by observing as under:-

*"In this connection it is made clear that the provisions of subsection 2 and 3 of section 271AAA will not be applicable to the appellant as the assessment year 2005-06 is not the specified previous year. The said provisions are applicable only for the specified previous year. The explanation (b) to section 271AAA defines the term specified previous year. The relevant provision is as under:*

*(b) specified previous year" means the previous year—*

*(i) which has ended before the date of search, but the date of filing the return of income under subsection (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the*

*previous year before the said date: or  
(ii) in which search was conducted]"*

*9.10 The search in this case was conducted on 20.2.2008. Since the XY.2005-(163 is not the specified previous year, the provisions of sect' (2) & 3) of the Act will not be applicable in the case of the Appellant."*

During the course of hearing before us, nothing has been brought to point out anything wrong on law or on facts in the aforesaid findings of Ld. CIT(A). Under these circumstances, the order of Ld. CIT(A) is upheld. Ground 4 is rejected.

**11.** As a result, appeal of the assessee is hereby dismissed.

**12. Now we shall take up assessee's appeals for A.Ys. 2006-07 and 2007-08 in ITA No.751 and 752/Mum/2014 and appeal for A.Y. 2008-09 in ITA No.753/Mum/2014.**

It is noted that grounds raised and issues involved in these appeals are identical to appeal for A.Y. 2005-06. Therefore, our order for A.Y. 2005-06 shall apply mutatis mutandis on the appeals of these years. As a result, these appeals are also dismissed.

**13. Now we shall take up Revenue's appeals for A.Y. 2005-06 (ITA No.949/Mum/2014); A.Y. 2006-07 (ITA No.950/Mum/2014); A.Y. 2007-08 (ITA No.951/Mum/2014); and A.Y.2008-09 (ITA No.952/Mum/2014).**

It is noted that the solitary ground raised by the Revenue in all these appeals is for challenging the action of Ld. CIT(A) in reducing the quantum of penalty from 200% to 100%. It is noted that penalty has been levied by the AO @200% of tax sought to be evaded. However, while levying the penalty at 200%, no justification has been given by AO in the penalty order as to why it was a fit case for levy of penalty at 200% and not at minimum

rate of 100%. Under these circumstances, Ld. CIT(A) reduced the same to 100% by observing as under:-

*“ 9.11 The appellant also argued that the penalty proceedings u/s 271(1)(c) of the Act are quasi criminal in nature and distinct from the assessment proceedings and therefore no penalty could be levied in its case is not acceptable in view of the decision of the Hon'ble Supreme Court's decision in the case of Union of India v Dharamendra Textile Processors [2008] 174 Taxman 571 (SC) wherein it was held that for the purpose of levy of penalty u/s 271(1)(c) of the I.T. Act, the Assessing Officer is not required to establish mens rea as in the case of prosecution, which is a criminal liability.*

*9.12 In view of the above, levy of penalty u/s 271(1)(c) of the Act by the A.O. is justifiable. However, as far as the quantum of the penalty is concerned, considering the overall facts and circumstances of the case the penalty at 100% of the amount of tax sought to be evaded will meet the ends of justice instead of 200% as levied by the assessing officer, accordingly the assessing officer is directed to levy penalty only at 100% of the amount of tax sought to be evaded.”*

**14.** During the course of hearing before us, nothing has been argued by the Ld. DR to show anything wrong in the reasoning given by Ld. CIT(A). No justification was given before us as to why the penalty should be levied at 200%. Nothing could be shown from the order of the AO wherein any justification was given by AO for levy of penalty at 200%. Under these circumstances, we find that no interference is called for in the order of Ld. CIT(A). Therefore, his order on this issue is upheld. The ground raised by the Revenue is dismissed.

**15.** As a result, all the appeals filed by the Revenue are dismissed.

**16.** As a result, assessee's appeals as well as Revenue's appeals are dismissed.

*Order was pronounced in the open court at the conclusion of the hearing.*

Sd/- (JOGINDER SINGH)	Sd/- (ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt: 8<sup>th</sup> February, 2017

Copy to:

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, B-Bench

(True copy)

By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES