IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA

Before Shri P.M. Jagtap, Accountant Member
and Shri S.S. Viswanethra Ravi, Judicial Member

I.T.A. Nos. 639, 640, 641, 642, 643 & 644/KOL/2009
Assessment Years:2000-01, 2001-02, 2002-03, 2003-04, 2004-05& 2005-06

Deputy Commissioner of Income Tax,.....Appellant
Central Circle-XVI, Kolkata,
Poddar Court,
18, Rabindra Sarani,
Kolkata-700 001

-Vs.-
Shri Satyam Roy Chowdhury,.....Respondent
FE-401, Sector-III, Salt Lake City,
Kolkata-700 064
[PAN : ACWPR 5806 K]

Appearances by:
Shri Rajat Subhra Biswas, CIT, D.R., for the Department
Shri A.K. Tibrewal, FCA and Shri Amit Agarwal, Advocate, for the assessee

Date of concluding the hearing : January 12, 2016
Date of pronouncing the order : February 24, 2016

O R D E R

Per Shri P.M. Jagtap :-

These six appeals are preferred by the Revenue against six separate orders passed by the ld. Commissioner of Income Tax (Appeals), Central-II, Kolkata dated 12.01.2009, whereby he cancelled the penalties imposed by the Assessing Officer under section 271(1)(c) of the Act for the years under consideration as under:-

Assessment Year	Amount of penalty
2000-2001	Rs. 4,99,620/-
2001-2002	Rs. 7,02,000/-
2002-2003	Rs. 6,12,000/-
2003-2004	Rs.11,25,000/-
2004-2005	Rs.24,25,000/-
2005-2006	Rs.68,25,882/-

2. The assessee in the present case is an individual, who belongs to the Techno Group, which is involved in educational activities. The said activities are carried on in the name of some Societies/Trusts including mainly The Institute of Computer Engineers (India), The Academy of Engineers (India), Techno India, The Academy of Engineering & Management Trust, The Academy of Higher Education and Technical Trust. The Techno Group is closely held and family managed with key persons being assessee and Shri Goutam Roychowdhury. A search and seizure action was conducted in the cases belonging to Techno Group on 09.08.2005 including the case of the assessee. During the course of the said action, cash, jewellery and Bank deposits were found beside some undisclosed Bank accounts and some incriminating material showing unrecorded transactions. The unaccounted Bank accounts and unrecorded transactions found during the course of search were owned by the assessee and in his statement recorded under section 132(4), the assessee offered to tax additional income of Rs.5,00,00,000/-. Subsequently in the returns of income filed in response to the notice issued by the Assessing Officer under section 153A, the additional income surrendered during the course of search was offered to tax by the assessee as under:-

Assessment Year	Amount
2001-2002	Rs. 20,00,000/-
2002-2003	Rs. 20,00,000/-
2003-2004	Rs. 35,00,000/-
2004-2005	Rs. 75,00,000/-
2005-2006	Rs.1,50,00,000/-
2006-2007	Rs.2,00,00,000/-
TOTAL	Rs.5,00,00,000/-

3. During the course of assessment proceedings, the assessee *suo motu* prepared a cash flow statement taking into consideration the

unaccounted inflow and outflow as evident from the various documents, Bank accounts and other assets found during the course of search and offered higher additional income of Rs.5,67,92,912/- on the basis of such cash flow statement instead of Rs.5,00,00,000/- for the various assessment years as under:-

Assessment Year	Amount
2000-2001	Rs.15,14,000/-
2001-2002	Rs.20,00,000/-
2002-2003	Rs20,00,000/-
2003-2004	Rs.35,00,,000/-
2004-2005	Rs.75,00,000/-
2005-2006	Rs.2,,02,78,912/-
2006-07	Rs.2,00,00,000/-
TOTAL	Rs.5,67,92,912/-

In the assessments completed under section 143(3)/153A vide orders dated 31.12.2007, the income as finally offered by the assessee was accepted and brought to tax by the Assessing Officer in the hands of the assessee.

4. Thereafter penalty proceedings under section 271(1)(c) were initiated by the Assessing Officer in respect of the additional income offered by the assesese in the returns of income filed in response to the notices under section 153A as well as during the course of assessment proceedings on the basis of cash flow statement *suo motu* prepared by him for all the years under consideration. The explanation offered by the assessee in response to the penalty notices issue by the Assessing Officer mainly was that the additional income had been offered voluntarily and the same having been accepted in the assessments, there was no case of any concealment of particulars of income or furnishing of inaccurate particulars of income warranting levy of penalty under section 271(1)(c).

This explanation of the assessee was not found acceptable by the Assessing Officer. According to him, the additional income was disclosed by the assessee only as a result of search and so the disclosure made by the assessee could not be considered as voluntary. He, therefore, proceeded to impose penalties under section 271(1)(c) for all the years under consideration, as mentioned in para 1 of this order being 100% of the tax sought to be evaded by the asseesese in respect of additional income offered as a result of search.

5. The penalties imposed by the Assessing Officer under section 271(1)(c) for all the years under consideration were challenged by the assessee in the appeals filed before the ld. CIT(Appeals). During the course of appellate proceedings before the ld. CIT(Appeals), the assessee mainly claimed the immunity available under Clause 2 of Explanation 5 to section 271(1)(c) by contending that the income offered during the course of search having been duly declared in the returns of income and tax thereon having been paid, no penalty under section 271(1)(c) was leviable as per Clause 2 of Explanation 5 to section 271(1)(c). This stand of the assessee was found acceptable by the ld. CIT(Appeals) and he cancelled the penalties imposed by the Assessing Officer under section 271(1)(c) for all the six years under consideration for the following reasons given in paragraph no. 3.1 to 3.3 of his impugned orders, which are identical:-

> *"3.1. The submissions are carefully considered in the light of the facts recorded in the assessment order and the penalty order. From a reading of penalty order, it is seen that the cash found at different searched premises and claimed by the appellant were offered as part of the cash flow of additional income reflected in the return of income u/s. 153A. There was no unexplained jewellery. Several bank accounts were found at the time of search source of which were not disclosed and were owned up by the appellant or beneficially operated by him, The appellant was also found to be the owner of an fixed deposit of Rs.78,272/-. The total amount from all these sources is Rs.76,43,397/- for which a cash flow statement is prepared. The seized documents and papers are stated to be recording transactions generally reflected in the disclosed books of account. Some unaccounted transactions are also admitted.*

Considering every aspect of the search material a cash-flow statement is prepared in the course of assessment proceedings and the appellant offered additional income as tabulated in para 2.1.of this order. The difference between the amount of undisclosed income in the statement u/s. 132(4) and the disclosure in the course of assessment proceedings is Rs.67,92,912/-on account of more accurate working of the disclosed income on a scrutiny of the search material, the same had to be enhanced from the round figure of Rs.5,00,00,000 to the accurate figure of Rs.5,67,92,912/-. No new source of unaccounted and undisclosed income is detected. In my opinion, it is to the credit of the appellant that the correct amount of undisclosed is worked out on the basis of the same material for the purpose of assessment u/s. 153A. Therefore the disclosure of the additional amount of Rs.67,92,912/- is a continuation of the disclosure of Rs.5,00,00,000/- in the statement u/s. 132(4). As a consequence, the year wise allocation of undisclosed income is revised as seen from paragraph 2.1 of this order. Penalty proceedings are in respect this additional amount.

3.2. In my opinion, the appellant should get the protection of second exception of Explanation 5 to section 271(1)(c). The relevant judicial authorities are Delhi High Court judgment in the case of C.I.T vs. Chhabra Emporium (264 ITR 299), Rajasthan High Court judgement in case of C.I.T vs~ C. Kanhaiyalal (299 ITR 19), Gujarat High Court judgement in the case of C.IT vs. Mahendra C. Shah (299 ITR 305). It is true that the admission in the assessment proceedings is for an amount as income in this assessment year when the statement u/s 132(4) did not offer any income for this assessment year. But the disclosure u/s 132(4) was for a lump sum amount of Rs.5,00,000/-, which is allocated to different years based on search material and for convenience of assessment. The statement u/s 132(4) or the assessment orders based on the statement do not correlate the additional income offered for tax with specific documents or unexplained asset detected during the search. It the assessee, who, on his own, arrived at a higher amount of total undisclosed income. As a consequence of this a certain income was allocated to AY 2000-01 also, which was not done earlier. But this is a part of and in consequence of more accurate working carried out voluntarily by the appellant on a closer scrutiny of the seized material.

3.3. In the exercise of discretion for levy of penalty u/s 271(1)(c), these facts became relevant. The appellant wanted an end to all disputes. As a demonstration of this desire, the assessment is not disputed. The enhancement of additional income is another demonstration of this desire. In the absence of any specific material leading to the detection of additional income for A.Y. 2000-01 by the assessment order, it should be treated as a part of the desire of the appellant to buy peace with the department with this accurate working on the basis of

> *the identical search material in respect of which the earlier admission of additional income of Rs.500,00,000/- for the entire search period was made. It is thus that the authorities relied upon by the appellant before the assessing officer in the course of penalty proceedings became relevant. Considering the totality of circumstances, this is not a fit case for the levy of penalty. The order of penalty is cancelled and the appeal is allowed".*

Aggrieved by the order of the ld. CIT(Appeals), the Revenue has preferred these appeals before the Tribunal.

6. At the time of hearing before us, the ld. Counsel for the assessee, at the outset, has pointed out that the tax effect involved in three of the appeals of the Revenue for A.Y. 2000-01, 2001-02 & 2002-03 is less than the revised monetary limit recently fixed by the CBDT vide Circular No. 21/2015 dated 10th December, 2015 at Rs.10,00,000/- for filing the appeal by the Revenue before the Tribunal and this position clearly evident from the grounds raised by the Revenue in this appeal is not disputed even by the ld. D.R. In Circular No. 21/2015 (supra) recently issued by the CBDT, the monetary limit for filing the appeals by the Revenue before the Tribunal has been increased to Rs.10,00,000/- and as clarified in the said Circular, the said monetary limit is applicable retrospectively even to the appeals pending before the Tribunal. The CBDT has also instructed that such pending appeals below this specified tax limit of Rs.10,00,000/- may be withdrawn/ not pressed. Keeping in view the instruction given by the CBDT vide Circular No. 21/2015 dated 10.12.2015, which is squarely applicable in the present case, the appeals filed by the Revenue for A.Ys. 2000-01, 2001-02 & 2002-03 are treated as withdrawn/not pressed and dismissed accordingly.

7. As regards the other three appeals of the Revenue for A.Y. 2003-04, 2004-05 & 2005-06 involving a common issue relating to the cancellation by the ld. CIT(Appeals) of the penalties imposed by the Assessing Officer under section 271(1)(c), we have heard the arguments of both the sides on merit and also perused the relevant material available on record. It is

observed that the undisclosed income offered by the assessee in the statement recorded under section 132(4) in the course of search having been declared by the assessee in the returns of income filed for A.Ys. 2003-04, 2004-05 & 2005-06 and tax in respect of such income having been paid by him together with interest, the immunity as provided under Clause 2 of Explanation 5 to section 271(1)(c) was available to the assessee as held by the ld. CIT(Appeals) in his impugned order and this position is not disputed even by the ld. D.R. He, however, has contended that the additional income of Rs.52,78,912/- was offered by the assessee for AY 2005-06 over and above the undisclosed income offered in the statement recorded under section 132(4) and declared in the return of income filed in response to the notices under section 153A and the immunity as per Clause 2 of Explanation 5 to section 271(1)(c) is not available in respect of this income. In this regard, the ld. Counsel for the assessee has relied on the decision of the Coordinate Bench of this Tribunal in the case of DCIT –vs.- Deepak Choudhury rendered vide its order dated 30.11.2015 in ITA Nos. 1875 to 1878/KOL/2009, wherein the assessee was held to be entitled for such immunity even in respect of additional income offered during the course of assessment proceedings after discussing the various case laws in paragraph no. 6.2 to 6.6 of the order as under:-

> "6.2. We find lot of force in the arguments of the Learned AR that the additional disclosure of Rs. 25,00,000/- for the Asst Year 2005-06 was made before any detection by the department and was made voluntarily and hence the same has to be construed only as a revision of the disclosure statement u/s 132(4) of the Act as there was nothing contrary that was suggested in the penalty order u/s 271(1)(c) of the Act with regard to the same. In this regard, it is relevant to place reliance on the decision of coordinate bench decision of this tribunal in the case of *DCIT vs Shayam Sunder Beriwal (Kolkata Tribunal) in ITA Nos. 1061 , 1062 & 1063 / Kol / 2008 dated 31.10.2008 for the Asst Years 2003-04 , 2004-05 & 2005-06* , wherein it was held that :-
>
> *" In the present case, this is also not a case of Revenue that the higher income declared by the assessee during the course of re-assessment proceedings only after being appraised by the department since the assessee paid tax of such higher income which was disclosed vide filing the return in response to notice under section 153C and such higher income has been filed by the assessee suo motu and before any specific finding by the Department the same cannot tantamount to concealment. We also find that such higher income shown by the assessee has also been found to be*

correct by the Department, therefore, in our considered opinion and following the ratio laid down by the various legal pronouncement the same cannot be termed to be concealment and is beyond the scope of penalty under section 271(1)(c) and , therefore, in these circumstances, in our considered opinion, the Learned CITA wsa justified in deleting the addition in case of all the above four years and we, therefore, do not find any reason to interfere with the order of Ld. CIT(A) and uphold the same and reject the grounds raised by the Revenue in case of all the four years. "

6.2.1. It will be relevant to discuss the following case law at this juncture i.e the decision of *ITAT Delhi Bench in the case of Prem Arora vs DCIT reported in (2012) 24 taxmann.com 260 (Delhi)* wherein the head notes are reproduced herein below:-

"Section 271(1)(c), read with section 153A, of the Income Tax Act, 1961 – Penalty – For Concealmentof income – Assessment Year 2004-05 – Whether for purpose of imposition of penalty under section 271(1)(c) resulting as a result of search assessments made under section 153A, original return of income filed under section 139 cannot be considered – Held, Yes – Whether concealment of income has to be seen with reference to additional income brought to tax over and above income returned by assessee in response to notice issued under section 153A and, therefore, once returned income under section 153A is accepted by Assessing Officer, it can neither be a case of concealment of income nor furnishing of inaccurate particulars of such income – Held, yes – Search was conducted on 22-11-2006 and cash was found from possession of assessee – Assessee had drawn cash flow statement for entire period of six years in order to determine undisclosed income based on seized material for each of six assessment years – Whether penalty under section 271(1)(c) cannot be imposed by invoking Explanation 5 in assessment year 2004-05 in respect of cash found in previous year relevant to assessment year 2007-08 , merely on presumption that assessee might have been in possession of cash throughout period covered by search assessments – Held, yes [in favour of assessee]

6.2.2. We find that this decision of Delhi Tribunal has been followed by this Tribunal in the case of *DCWT vs Vivek Kr. Kathotia in WTA Nos. 02 to 08 / Kol / 2013 dated 15.5.2015,* wherein it was held that :-

"That the concept of a voluntary return of income may be important in penalty proceedings initiated in the normal assessment proceedings u/s 143(3) or 147 of the Act but not u/s 153A of the Act. When accepted by the AO then there is no concealment of income and consequently penalty u/s 271(1)(c) of the Act cannot be imposed. The concealment of income is to be determined with regard to the return of income in response to notice u/s 153A of the Act. Therefore, in the present circumstances and facts of the case once the returned wealth is accepted by the AO u/s 153A of the Act then there cannot be a case of concealment of income or furnishing inaccurate particulars of income. In the circumstances and facts of the case the decision in the case of Prem Arora vs DCIT (24 taxmann.com 260) (Delhi Tribunal) is squarely applicable in the present case, since in the present case the assessee has disclosed gold and diamond in the statement recorded u/s 132(4) of the Act during the search operation itself, in the wealth tax return the Tribunal has approved the findings in quantum with regard to the genuineness of the declaration of gold and diamonds. Accordingly the assessee is not liable to have penalty u/s 271(1)(c) of the Act.

6.3. We find that the assessee had made a disclosure statement u/s 132(4) of the Act after the search offering undisclosed income, explaining the manner in which such income was derived

and paid taxes thereon together with interest. The assessee also duly offered the said undisclosed income in the returns filed in response to notice under section 153A of the Act and assessments completed accordingly. We hold that the expression "to be furnished" in Clause 2 of Explanation 5 to Section 271(1)(c) of the Act has to be understood as "required to be furnished" which in turn has to be understood as a return required to be furnished in response to notice u/s 153A of the Act. In this regard, we place reliance on the decision of the *Jurisdictional Calcutta High Court in the case of CIT vs Brijendra Gupta in ITA No. 330 of 2009 dated 8.6.2015* , wherein the question raised before their Lordships and their decision rendered thereon is as under:-

The following question of law was suggested by the revenue:-

> *"Whether on the facts and circumstances of the case, the Learned Tribunal was justified in law in confirming the order of the CIT(A) in deleting the penalty levied under section 271(1)(c) of the Income Tax Act, 1961 on the ground that the assessee is entitled to immunity from penalty on account of Explanation 5 to section 271(1)(c) when the assessee's case does not come under the purview of the exceptions provided therein."*
>
> *Held that :*

Clause (a) of Explanation 5 to section 271(1)(c) contemplates income for any previous year for which returns has been furnished but the income since disclosed had not been shown. It is axiomatic that if such income had been disclosed in the returns filed under section 139, the question of undisclosed income would not have arisen. When the return had been filed but the income since discovered was not disclosed, the question of concealment naturally arises. The legislature, however, made a conscious departure by carving out an exception provided the conditions laid down in Clause (i) or Clause (ii) thereof have been complied with.

We are, in this case, concerned with Clause (ii). One of the conditions is that the assessee makes a statement under section 132(4) that the assets unearthed have been acquired out of his income which has not been dislosed so far in his returns of income already filed. The difficulty arises by the use of the expression "to be furnished before the expiry of time specified in sub-section (1) of section 139". A confusion is likely to arise as to whether the departure has been sought to be made by the legislature only for those cases where the statement as regards undisclosed income was made pertaining to a previous year for which time to file return under section 139 had not expired. But that was not the intention because the expression "unless" appears after Clauses (a) and (b) of Explanation which provides for imposition of penalty. Therefore, "unless" has to apply to the provision for imposition of penalty. Therefore, the aforesaid expression "to be furnished" has to be interpreted as "required to be furnished". Only in that case the section will make a meaning otherwise the section does not make any meaning.

We are supported in our view by the Judgement of the Madras High Court in the case of CIT vs S.D.Chandru reported in (2004) 266 ITR 175 (Mad)wherein a Division Bench opined that "The additional words which refer to the time specified in section 139(1) are only a

reiteration of the legal requirement regarding the time within which returns should normally be filed."

In that view of the matter, the question proposed by Revenue is answered in the affirmative and in favour of the assessee. The appeal is thus disposed of.

6.4. We hold that the immunity provided in Clause 2 of Explanation 5 to section 271(1)(c) of the Act is available to all the assessment years prior to the year of search if the conditions stipulated thereon are satisfied. Reliance in this regard is placed on the decision of the *Jurisdictional High Court in the case of CIT vs Ramesh Chand Goyal in G.A.No. 2347 of 2010 in ITAT No. 181 of 2010 dated 11.8.2010* , wherein the question raised before their Lordships and decision rendered thereon is as below:-

"(a) Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law in cancelling the order of penalties for Rs. 3,99,476/- , Rs. 5,24,169/-, Rs. 5,96,020/-, Rs. 4,86,030/- and Rs. 25,12,525/- for the assessment years 2002-03 , 2003-04, 2004-05, 2005-06 and 2006-07 respectively on the ground that the Explanation 5 to section 271(1)(c) protects the assessee from penalty on admitted undisclosed income under section 132(4) of the Act without appreciating that the assessee has made the disclosure in the Assessment Years 2006-07 and the immunity under Explanation 5 to Section 271(1)(c) is available for the years for which the return is yet to be furnished before the expiry of time limit under section 139(1) of the Act whereas the due date for filing of return under section 139(1) of the Act for the assessment years 2001-02 to 2005-06 had already expired and returns filed prior to the date of search and for the assessment years 2006-07 also the return was not filed on the due date."

We have heard Mr.Sinha extensively and gone through the impugned judgement and order of the Learned Tribunal. The Learned Tribunal has recorded the fact that the record does not show that the Assessing Officer had detected the additional income in the assessment proceedings. It further recorded upon perusal of the records that small variation in income was due to bona fide mistakes and difficulties in working out the undisclosed income. It is further recorded that the voluntary action on the part of the assessee to settle the tax issues for peace of mind appears from the conduct of the assessee. While recording the aforesaid fact, the Learned Tribunal ultimately relied on a decision of the Tribunal rendered in the case of Additional CIT vs Prem Chand Garg. Mr. Sinha, however, is unable to say whether the earlier decision of the Tribunal in the case of Prem Chand Garg has been challenged or not. Moreover, the learned Tribunal has also relied on a large number of decisions of the various court on the same point. Hence when the point is covered, we do not find any merit in this appeal for admission. Accordingly, the same is dismissed.

6.5. We would like to place reliance on the following decisions on the impugned issue before us :-

A) Jurisdictional High Court in the case of CIT vs Shri Samit Roy in ITA 354 of 2009 dated 3.9.2015, wherein the questions raised before their Lordships and their decision rendered thereon is as below:-

"(a) WHETHER on the facts and in the circumstances of the case the Income Tax Appellate Tribunal erred in law in upholding the order of Commissioner of Income Tax (Appeal) holding their amounts disclosing after search, which was not previously offered to tax is not a concealment on the part of the respondent / assessee ?

(b) WHETHER on the facts and in the circumstances of the case the Income Tax Appellate Tribunal erred in law in upholding the order of Commissioner of Income Tax (Appeal) holding the Assessing Officer was not justified in levying penalty under section 271(1)(c) of the Income Tax Act, 1961 for the Assessment Years 2003-04 to 2005-06 ?"

Since both the questions are covered by the judgements passed by this Court in ITA 39 of 2010 (Commissioner of Income Tax , Central –I, Kolkata vs Amardeep Singh Dhanjal) and in ITA 330 of 2009 (Commissioner of Income Tax, Central –III, Kolkata vs Brijendra Gupta), both the questions are answered in the negative, against the revenue and in favour of the assessee.

The appeal is dismissed.

B) ***Jurisdictional High Court in the case of CIT vs Tapan Kumar Ghosh in ITA 6 of 2010 dated 3.9.2015,*** wherein the questions raised before their Lordships and their decision rendered thereon is as below:-

" Whether on the facts and in the circumstances of the case the learned Tribunal has committed error in applying the provisions of the Explanation 5 of Section 271(1)(c) of the Income Tax Act, 1961 and thereby committed error in law in modifying the order of penalty of Rs. 4,17,926/- in relation to the Assessment Years 2003-04 and 2005-06"

Since we find that the issue stands covered by the judgements delivered in ITA 39 of 2010 (Commissioner of Income Tax , Central –I, Kolkata vs Amardeep Singh Dhanjal) and in ITA 330 of 2009 (Commissioner of Income Tax, Central –III, Kolkata vs Brijendra Gupta), in favour of the assessee, the question is answered in the negative, against the revenue and in favour of the assessee.

The appeal is dismissed.

C) ***Gujarat High Court in the case of Kirit Dahyabhai Patel vs ACIT in Tax Appeal No. 1181 of 2010 with Tax Appeal No. 1182 to 1185 of 2010 dated 3.12.2014,*** wherein the question raised before their Lordships and their decision rendered thereon is as below:-

"Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in restoring the penalty imposed under section 271(1)(c) of the Act holding that benefit under Explanation 5 to Section 271(1)(c) of the Act would be available only for period where due date for filing the return under section 139(1) of the Act had not expired ?"

13. Considering the facts and circumstances of the case and also considering the decisions relied upon by learned Senior Advocate for the appellant, we are of the considered opinion that the view taken by the Tribunal is erroneous. The CIT(A) rightly held that it is not relevant whether any return of income was filed by the assessee prior to the date of search and whether any income was undisclosed in that return of income. In view of specific provision of Section 153A of the I.T.Act, the return of income filed in response to notice under section 153A of the I.T.A Act is to be considered as return filed under section 139 of the Act, as the

Assessing Officer has made assessment on the said return and therefore, the return is to be considered for the purpose of penalty under section 271(1)(c) of the I.T.Act and the penalty is to be levied on the income assessed over and above the income returned under section 153A, if any.

14. Further, in the present case, it appears from the record that the assesses had satisfied all the conditions which are required for claiming immunity from payment of penalty under section 271(1)(c)of the Act. The provision does not specify any time limit during which the aforesaid amount i.e the amount of penalty with interest has to be paid. Admittedly when the assessee herein have paid the entire amount with interest, the Assessing Officer ought to have granted them immunity available under Section 271(1)(c) of the Income Tax Act.

18. For the foregoing reaons, the present appeals stand allowed. The order of the Tribunal is quashed and set aside. Consequently, the order of the CIT(A) is restored. The question of law involved in this appeals is answered in favour of the assesee and against the revenue.

D. Gujarat High Court in the case of CIT vs Mahendra C Shah reported in (2008) 299 ITR 305 (Guj) *, it was held that :-*

The assessee having made a declaration u/s 132(4) and paid taxes thereon had fulfilled all the conditions for availing of the benefit of immunity from levy of penalty as provided under Explanation 5 to section 271(1)(c) of the Act.

E. Rajasthan High Court in the case of CIT vs Kanhaialal reported in (2008) 299 ITR 19 (Raj) ***,*** *it was held that :-*

Where the Assessing Officer had found the income to relate to different assessment years, in different volumes, as contra distinguished to the one submitted by the assessee, and had accordingly made the assessments, which assessments had become final and were not the subject matter of challenge, penalty u/s 271(1)(c) could not be imposed by virtue of Explanation 5.

F. Madras High Court in the case of CIT vs S.D.Chandru reported in (2004) 266 ITR 175 (Mad) ***,*** *it was held that :-*

Penalty u/s 271(1)(c) was not leviable by operation of Explanation 5 in a case where a statement u/s 132(4) was filed in course of a search and seizure and therefore, admitted a larger income for the earlier years on which tax with interest had been paid.

G. Rajasthan High Court in the case of ACIT vs Gebilal Kanhaialal reported in (2004) 270 ITR 523 (Raj) ***,*** *it was held that:-*

Penalty u/s 271(1)(c) was not leviable by operation of Explanation 5 in a case where a statement u/s 132(4) was filed in course of a search and seizure and thereafter the assessee has disclosed a particular concealed income and surrendered it for tax and tax had been together with interest.

6.6. In view of the aforesaid facts and circumstances of the case and in view of the various judicial precedents relied upon hereinabove including that of the Jurisdictional High Court and other High Courts, we are of the considered opinion that :

- the assessee has cumulatively satisfied all the conditions stipulated in Clause 2 of Explanation 5 to Section 271(1)(c) of the Act and hence entitled for immunity from levy of penalty for all the assessment years under appeal;

- the assessee had made voluntary disclosure of Rs. 25,00,000/- for the Asst Year 2005-06 during the course of search assessment proceedings after filing the return u/s 153A of the Act but before any detection by the department;

- the expression 'to be furnished' mentioned in Clause 2 of Explanation 5 to Section 271(1)(c) has to be construed as 'required to be furnished u/s 153A of the Act'

Accordingly, the grounds raised by the revenue for all the assessment years are dismissed".

8. As the issue involved in the present case is similar to the one involved in the case of Deepak Choudhury (supra), we follow the decision of the Coordinate Bench of this Tribunal rendered in the said case and uphold the impugned order of the ld. CIT(Appeals) allowing immunity to the assessee as per Clause 2 of Explanation 5 to section 271(1)(c) even in respect of the additional income of Rs.52,78,912/- offered for A.Y. 2005-06 during the course of assessment proceedings.

9. During the course of hearing before us, the ld. Counsel for the assessee has also raised a contention relying on the decision of the Coordinate Bench of this Tribunal in the case of Suvaprasanna Bhattacharya –vs.- ACIT rendered vide its order dated 06.11.2015 in ITA No. 1303/KOL/2010 that the satisfaction required for initiating the penalty proceedings under section 271(1)(c) having not been recorded by the Assessing Officer in the assessment order nor the same being discernable from the assessment orders passed by him, initiation of penalty proceedings itself was bad in law and the penalties imposed in pursuance thereof are liable to be cancelled. In this regard, the ld. D.R.

has not been able to point out any observation on finding recorded by the Assessing Officer in the assessment orders from which the satisfaction as required to be arrived at by the Assessing officer to initiate penalty proceedings under section 271(1)(c) is discernable. We, therefore, hold that the decision of the Coordinate Bench of this Tribunal in the case of Suvaprasanna Bhattacharya (supra) is squarely applicable in the present case and the penalties imposed by the Assessing Officer in the absence of requisite satisfaction recorded by him in the assessment orders are liable to be cancelled on this ground also. We accordingly uphold the impugned order of the ld. CIT(Appeals) cancelling the penalties imposed by the Assessing Officer under section 271(1)(c) for A.Y. 2003-04, 2004-05 & 2005-06 and dismiss the appeals of the Revenue for the said years.

10. In the result, all the six appeals of the Revenue are dismissed.

Order pronounced in the open Court on February 24, 2016.

Sd/-	**Sd/-**
(S.S. Viswanethra Ravi)	**(P.M. Jagtap)**
Judicial Member	**Accountant Member**

Kolkata, the 24th day of February, 2016

Copies to : *(1)* ***Deputy Commissioner of Income Tax,***
Central Circle-XVI, Kolkata,
Poddar Court,
18, Rabindra Sarani,
Kolkata-700 001

(2) ***Shri Satyam Roy Chowdhury,***
FE-401, Sector-III, Salt Lake City,
Kolkata-700 064

(3) Commissioner of Income-tax (Appeals), Central-II, Kolkata
(4) Commissioner of Income Tax, Kolkata
(5) The Departmental Representative
(6) Guard File

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.