आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA Nos. 730 to 733 & 872 to 873/Ind/2018
Assessment Years 2010-11 to 2015-16

Shri Hemant Kumar Jain, 20, Parsi Mohalla, Indore	Vs	Dy. Commissioner of Income Tax (Central)-1, Indore
Appellant		Respondent
PAN: ADXPJ4863C		

ITA Nos. 734, 870 & 871/Ind/2018
Assessment Years 2013-14 to 2015-16

Shri Harsh Jain, 20, Parsi Mohalla, Indore	Vs	Dy. Commissioner of Income Tax (Central)-1, Indore
Appellant		Respondent
PAN: AEIPJ3102L		

ITA No. 884/Ind/2018
Assessment Years 2014-15

Dy. Commissioner of Income Tax (Central)-1, Indore	Vs	Shri Hemant Kumar Jain, 20, Parsi Mohalla, Indore
Revenue		Respondent
PAN: ADXPJ4863C		

Revenue by	Shri Punit Kumar, Sr.DR
Assessee by	S/Shri Ashish Goyal & N.D. Patwa, ARs
Date of Hearing	21.01.2020
Date of Pronouncement	05.02.2020

O R D E R

PER MANISH BORAD, AM

The above captioned appeals filed at the instance of the assessee(s) and revenue pertaining to Assessment Years 2010-11 and 2015-16 are directed against the various order of Ld. Commissioner of Income Tax(Appeals)-III (in short Ld. 'CIT(A)'), Indore on various dates which are arising out of the order u/s 271(1)(c) & 271AAB of the Income Tax Act 1961(In short the 'Act') on 28.9.2016 framed by DCIT, Central-1, Indore(in short Ld. 'A.O).

2. As the issues raised in these bunch of appeals are mostly common they were heard together and thus being disposed off by this common order for the sake of brevity and convenience.

3. First we take up the appeals filed by the assessee(s) against the order of Ld. CIT(A) confirming levy of penalty u/s 271(1(c) of the Act raising following grounds of appeal:-

Shri Hemant Kumar Jain
ITA No. 730/Ind/2018
Assessment Year 2010-11

1.1 That the Ld. CIT(A) has grossly erred in confirming penalty u/s 271(1)(c) of the Act of Rs.15,000/- levied by A.O which is not in accordance with the law and therefore penalty requires to be deleted.

1.2 That the Ld. CIT(A) has erred in not accepting the assessee's contention and various judicial pronouncements therefore penalty requires to be deleted.
2. That the appellant craves leave to adduce additional grounds and/or amend or withdraw any of the aforesaid grounds before, or at the time of hearing of appeal.

ITA No. 731/Ind/2018
Assessment Year 2011-12

1.1 That the Ld. CIT(A) has grossly erred in confirming penalty u/s 271(1)(c) of the Act of Rs.20,000/- levied by A.O which is not in accordance with the law and therefore penalty requires to be deleted.

1.2 That the Ld. CIT(A) has erred in not accepting the assessee's contention and various judicial pronouncements therefore penalty requires to be deleted.
2. That the appellant craves leave to adduce additional grounds and/or amend or withdraw any of the aforesaid grounds before, or at the time of hearing of appeal.

ITA No. 732/Ind/2018
Assessment Year 2012-13

1.1 That the Ld. CIT(A) has grossly erred in confirming penalty u/s 271(1)(c) of the Act of Rs.26,000/- levied by A.O which is not in accordance with the law and therefore penalty requires to be deleted.

1.2 That the Ld. CIT(A) has erred in not accepting the assessee's contention and various judicial pronouncements therefore penalty requires to be deleted.

2. That the appellant craves leave to adduce additional grounds and/or amend or withdraw any of the aforesaid grounds before, or at the time of hearing of appeal.

ITA No. 733/Ind/2018
Assessment Year 2013-14

1.1 That the Ld. CIT(A) has grossly erred in confirming penalty u/s 271(1)(c) of the Act of Rs.46,00,000/- levied by A.O which is not in accordance with the law and therefore penalty requires to be deleted.

1.2 That the Ld. CIT(A) has erred in not accepting the assessee's contention and various judicial pronouncements therefore penalty requires to be deleted.
2. That the appellant craves leave to adduce additional grounds and/or amend or withdraw any of the aforesaid grounds before, or at the time of hearing of appeal.

Shri Harsh Jain
ITA No. 734/Ind/2018
Assessment Year 2013-14

1.1 That the Ld. CIT(A) has grossly erred in confirming penalty u/s 271(1)(c) of the Act of Rs.20,000/- levied by A.O which is not in accordance with the law and therefore penalty requires to be deleted.

1.2 That the Ld. CIT(A) has erred in not accepting the assessee's contention and various judicial pronouncements therefore penalty requires to be deleted.
2. That the appellant craves leave to adduce additional grounds and/or amend or withdraw any of the aforesaid grounds before, or at the time of hearing of appeal.

4. Brief facts of the case as culled out from the records are that the assessee are individuals engaged in money lending and hundi brokerage and also earned income from other sources. A search and seizure operation u/s 132 were carried out on the business as well as residential premises of the assessee associates on 09.04.2014.

Notices u/s 153A of the Act were issued to the assessee(s). In response to the notice return of income for Assessment Years 2010-11 to 2013-14 were filed. The assessee(s) offered additional income which includes undisclosed investment in hundies. Penalty proceeding u/s 271(1)(c) were initiated and finally levied. The details of the same are as under:-

A.Y.	Return income u/s 153A	Additional income offered	Concealed income	Penalty u/s 271(1)(c)	Remarks
Hemant Jain					
2010-11	3,00,380	1,42,380	1,42,380	15,000	Hundi investment Rs.1,35,000 Hundi interest Rs.7380/-
2011-12	3,74,540	1,93,690	1,93,690	20,000	Hundi investment Rs.1,70,000 Hundi interest Rs.23690/-
2012-13	4,50,030	2,49,240	2,49,240	26,000	Hundi investment Rs.1,87,500 Hundi interest Rs.61740/-
2013-14	1,54,31,110	1,52,01,350	1,52,01,350	46,00,000	Hundi investment Rs.1,43,20,000/- Hundi interest Rs.8,81,350/-
Harsh Jain					
2013-14	1,04,60,940	1,01,18,850	1,01,18,850	32,00,000	Hundi investment Rs.96,00,000 Hundi interest Rs.5,18,850/-

Aggrieved assessee preferred appeal before Ld. CIT(A) but could not succeed.

5. Now the assessee's are in appeal before the Tribunal.

6. At the outset Ld. Counsel for the assessee referring to Hon'ble Apex Court judgment in the case of National Thermal Power Corporation Ltd 229 ITR 383 (SC) requested to admit legal ground challenging the validity of penalty proceeding initiated by issuing notice u/s 274 of the Act. Ld. Counsel for the assessee submitted that as per provisions of Section 271(1)(c) of the Act the penalty can be initiated either for concealing the particulars of income or for furnishing inaccurate particulars of income, whereas the Ld.A.O has not recorded specific charge on the assessee, as to whether penalty is to be levied for 'furnishing inaccurate particulars of income or concealing the particulars of income'. Placing reliance on the judgment of Hon'ble Jurisdictional High Court in the case of *PCIT Vs Kulwant Singh Bhatia ITA No.9 of 2018 dated 9.5.2018*, the Ld. Counsel for the assessee contended that the Ld.A.O has failed in comply the provisions of section 271(1)(c) of the Act by initiating

the penalty proceedings with no specific charge. Reference was also made to following written submissions:-

<u>GROUND NO. 1 & 2 - Penalty cannot be levied ,as not as per law</u>

A. In the present case, on perusal of the show cause notice issued by the AO under section 274 r.w.s 271 of the Act for A.Y. 2011-12, A.Y. 2012-13 and A.Y. 2013-14 (PS 50, 52, 54) it may be noticed that Id *AD* did not mention whether the notice is issued for *"concealment of income"* or *"for furnishing of inaccurate particulars of income",*

It is submitted that bare perusal of the notice issued u/s 271(1)(c) apparently goes to prove that the Assessing Officer initiated the penalty proceedings by issuing the notice u/s 274/271(1)(c) of the Act without specifying whether the assessee has concealed "particulars of income or assessee has furnished "inaccurate particulars of Income", so as to provide adequate opportunity to the assessee to explain the show cause notice. Rather notice in this case has been issued in a stereotyped manner without applying any mind which is bad in law, hence is not a valid notice sufficient to impose penalty u/s 271{1)(c) of the Act.

Penalty cannot be levied on all issues in a "wholesale" manner. The AO has to give findings for each issue separately. He has to apply mind meticulously and carefully for each issue separately and establish precisely whether there was concealment of income or furnishing of inaccurate particulars of income. The Assessee cannot be fastened with the liability of penalty without there being a clear or specific charge. Fixing a charge in a vague and casual manner is not permitted under the law. Fixing twin charges is also not permitted under the law.

Therefore, as per the ratio laid down by <u>Hon'ble M.P. High Court in Pr.</u>

CIT vs Kulwant Singh Bhatia, (CL - 9-13) the notice issued by the AO is not valid and consequently, the order passed under Sec 271 (i) (c) is also not valid.

B.Failure by the AO to specify in the s. 274 notice whether the penalty is being initiated for 'furnishing of inaccurate particulars of income' or for 'concealment of income' is fatal. It reflects non-application of mind and renders the levy of penalty invalid *(Manjunatha Cotton* 359 *ITR* 565 *(Kar)* (CL 43-62)

C.The notice issued without application of mind, vague and not specific is liable to be quashed. Placing reliance on the judgment of Hon'ble Jurisdictional High Court in the case of *PCIT Vs Kulwant Singh Bhatia ITA No.9 of 2018 dated 9.5.2018* (CL 9-13)

Further, the impact of dismissal of SLP by the Hon'ble Supreme Court in Sundaram Finance Ltd. is discussed as Annexure A enclosed along with the various recent judgments by the Hon'ble ITAT, Indore Bench.

Thus, it is prayed that the penalty u/s. 271(1)(c) may kindly be deleted.

7. Per contra Departmental Representative vehemently argued supporting the orders of lower authorities.

8. We have heard rival contentions and perused the records placed before us and carefully gone through various judgments referred and relied by the Ld. Counsel for the assessee in support of the common legal issue in all these five bunches challenging the legality of the penalty proceedings initiated by issuance of notice

u/s 274 r.w.s 271(1)(c) of the Act contending that in the alleged penalty notices issued u/s 274 of the Act no specific charge has been leveled against the assessee. Ld. A.O has mentioned both the limbs i.e. concealed the particulars of income or furnished inaccurate particulars of income and has not striked one of the applicable one.

9. To adjudicate this issue we will have to go through the impugned notice u/s 274 r.w.s. 271(1)(c) of the Act which has been placed in the paper book and have been separately issued for all the assessment years. No dispute has been raised on the part of the both the parties that similar notices have been issued in all the impugned cases qua Assessment Years 2010-11 to 2013-14. We are therefore reproducing below the notice dated 31.3.2016 and 16.9.2016 issued u/s 274 r.w.s. 271(1)(c) of the Act for Assessment Year 2010-11 in the case of Shri Hemant Kumar Jain placed at Page-34 & 35 of the paper book dated 04.10.2019:-

OFFICE OF THE
Deputy Commissioner of Income Tax (Central)-I, Indore

PAN. ADXPJ4863C

Date: 31.03.2016

To,

Shri Hemant Kumar Jain,
20, Parsi Mohalla,
Indore 452006

NOTICE UNDER SECTION 274 READWITH SECTION 271(1)(c) OF THE INCOME TAX ACT, 1961

Whereas in the course of proceedings before me for the A.Y. 2010-11 it appears to me that you :-

have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are hereby requested to appear before me at 03.30 PM on 02.05.2016 and show cause why an order imposing 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 or before the said date which will be considered before any such order is made under section 271(1)(c).

Sd/-
(Amit Kumar Soni)
Asstt. Commissioner of Income Tax (Central)-1
Indore

OFFICE OF THE
Deputy Commissioner of Income Tax (Central)-I, Indore

PAN. ADXPJ4863C

Date: 16.09.2016

To,

Shri Hemant Kumar Jain,
20, Parsi Mohalla,
Indore

Sir,

Sub: Penalty fixation u/s 271(1)(c) r.w.s. 129 of the Income Tax Act, 1961 -reg.

Please refer to the above

The following penalty proceeding are initiated during assessment as mentioned below:

S.NO.	A.Y.	Section	Penalty initiated on
1	2010-11	271(1)(c)	31.03.2016

You are requested to appear before the undersigned on 19.09.2016 at 11.00 AM in my office at Room No.101, Aayakar Bhawan, Main opp. White Church, Indore personally or through authorized representative to show cause as to why penalty u/s 271(1)(c) of the I.T. Act 1961 be not levied against you. If you do not want to appear personally, you may send your written reply on or before above mentioned date. If any that you have nothing to say in this regard. It is to brought to your notice that there is a change in incumbent hence this notice is issued to provide opportunity of being heard to the assessee.

Sd/-
(Avaneesh Tiwari)
Deputy Commissioner of Income Tax (Central)-I
Indore

10. Perusal of the show cause notices makes the fact visible that the Ld. A.O while issuing the notice for initiating the penalty proceedings u/s 271(1)(c) has leveled both the charges against the assessee along with mentioning the word 'or in between' in the first notice issued on 31.3.2016 and not mentioning any charge in the second notice issued on 16.9.2016. It is not emanating out of the penalty notices that the addition made in the hands of the assessee on which the penalty proceedings are initiated, comes under which category i.e whether the addition is for concealing the particulars of income or the addition is for furnishing inaccurate particulars of income.

11. In these given facts where the Ld. Assessing Officer has not striked off one of the limb provided u/s 271(1)(c) of the Act for the charge to be leveled against the assessee i.e. whether the penalty proceedings have been initiated for concealment of particulars of income or furnishing inaccurate particulars of income or has not specified any specific charge in the notice and merely mentioned the section, various Hon'ble Courts have consistently held in the favour of the assessee.

12. In the case of CIT V/s. Manjunatha Cotton Ginning Factory (359 ITR 565), it was observed by the Hon'ble Karnataka High Court in para 59 that the *"practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy the requirement of law when the consequences of the assessee not rebutting the initiated presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the provisions have to be held to be strictly construed, notices issued under Section 274 should satisfy the grounds, which he has to meet specifically, otherwise, principle of natural justice is offended if the show cause notice is vague".*

13. The judgment in the case of CIT Vs. Manjunatha Cotton Ginning Factory(supra) was further followed by the Karnataka High Court in the case of CIT Vs. SSA'S Emerald Meadows, (2016) 73 taxman.com 248 (SC) dated 23.11.2015 (ITA 380/2015) wherein Hon'ble High Court dismissed the appeal of the revenue by observing that the *"Tribunal has allowed the appeal of the assessee holding that the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Act of 1961 was bad-in-law as it did not specify which limb of Section 271(1)(c) of the Act of 1961, the penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars. The Tribunal while allowing the appeal of the assessee, had relied on the decision of the Division Bench of Karnataka High Court decision in the case of CIT Vs. Maniunatha Cotton Ginning Factory(supra)".*

14. It is further pointed out that the SLP filed by the Deptt. before the Apex Court on 5.8.2016 in the matter of CIT Vs. SSA'S Emerald Meadows(supra) was dismissed.

15. Very recently the Hon'ble jurisdictional High Court in the case of Principal Commissioner of Income Tax v/s Kulwant Singh Bhatia

dated 09.05.2018 (ITA 9 to 14 of 2018) has held that the penalty u/s 271(1)(c) of the Act of 1961 is not sustainable in law as the notice was not specific observing as follows:-

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

16. We observe that the facts of the case before the Hon'ble jurisdictional High Court in the case of Kulwant Singh Bhatia *(supra)* were almost identical in so far as additional income was offered by the assessee in the returns filed after the search on the basis of unexplained deposits in the various bank accounts and FDRs as well as incriminating transactions as per the seized documents. Assessments were completed u/s 153A accepting the returned income u/s 153A. It was the observation of the Ld. AO that the assessee has offered additional income only due to search and the additional income was not declared in the return filed u/s

139 and therefore, penalty proceedings u/s 271(1)(c) were initiated. The penalties were also confirmed by the CIT(A) but were deleted by the Tribunal holding the same as not sustainable in law, as no specific charge was levied in penalty show cause notice.

as no specific charge was levied in the penalty show cause notice.

17. The ITAT Indore Bench in the case of group appeals of Keti Sangam Infrastructure (I) Ltd. and others ITA No 1343 & 601/Ind/2016 dated 27.06.2018 (authored by us) following the judicial precedents deleted the penalties levied u/s 271(1)(c) by stating that the assessing officer has not struck down the relevant "charge" from the sentence in the cyclostyled proforma of penalty show cause notice which means that the assessing officer was not sure as to on what ground he has initiated the penalty proceedings and in such a case the alleged notice is not sustainable in law.

18. We also find that in the recent decision authored by us in the case of Shri Varad Mehta ITA. No.693/Ind/2016 adjudicating the similar legal issue challenging the validity of the penalty proceedings initiated u/s 271(1)(c) of the Act for the alleged technical error and non application of mind by the Ld.A.O in issuing notice u/s 274 of the Act we observed as follows:-

"13. From perusal of the above show cause notice we find that the Ld.A.O has merely mentioned the section but the specific charge i.e. whether the penalty have been initiated for concealment of particulars of income or for furnishing inaccurate particulars of income has not been mentioned. Now whether such type of notice which does not speak about the specific charge leveled against the assessee is valid and tenable in the eyes of law needs to be examined.

14. We find that similar issue came up before the jurisdictional High Court in the case of Shri Kulwant Singh Bhatia (supra) wherein the Hon'ble Court discussed the judgment of Hon'ble High Court in the case of CIT V/s Manjunatha Cotton Ginning Factory *(supra)* and CIT V/s SSA's Emeralad Meadows *(supra)* held that *"on due consideration of the arguments of the Ld. counsel for the appellant, so also considering the fact that the ground mentioned in show cause notice would not specify the requirement of law, as notice was not specific, we are of the view that Ld. Tribunal has rightly allowed the appeal of the assessee and set aside the order of penalty enforced by the authority".*

15. Similarly in the case of CIT V/s Manjunatha Ginning Factory, Hon'ble High Court of Karnataka held that *"the notice issued u/s 274 r.w.s. 271(1)(c) of the Act should specifically mention the ground in section 271(1)(c) whether concealment of income or for furnishing in accurate particulars of income. Sending printed form where all ground of section 271(1)(c) would not mentioned the specific requirement of law. Assessee should know the grounds on which he has charged specific otherwise opportunities of natural justice denied. On the basis of such proceedings no penalty could be imposed to the assessee. Taking up the penalty proceedings on one limb and finding the assesssee in another limb is bad in law".* Though in the instant appeal the Ld. A.O has made proper satisfaction in the body of the assessment order but in the notice issued u/s 274 r.w.s. 271(1)(c) of the Act he failed to mention the limbs for which penalty proceedings have been initiated. It is the negligence of the

Ld. A.O in not making proper specific charge in the notice u/s 274 about the addition for which penalty proceedings have been initiated. Ld. A.O should be clear as to whether the alleged addition goes under the limb of "concealment of particulars of income" or "furnishing inaccurate particulars of income". Merely issuing notice in general proforma will negate the very purpose of natural justice as held by the Hon'ble Apex Court in the case of Dilip N Shraf 161 Taxmann 218 that "the quasi-criminal proceedings u/s 271(1)(c) of the Act ought to comply with the principles of natural justice.

14. We therefore respectfully following above referred judgments and in the given facts and circumstances of the case are of the considered view that the alleged notice issued u/s 274 r.w.s. 271(1)(c) of the Act dated 31.12.10 is invalid, untenable and suffers from the infirmity of non application of mind by the Assessing Officer. We accordingly direct to delete the penalty of Rs.16,00,000/- imposed u/s 271(1)(c) on this ground itself. We accordingly allow the additional ground raised by the assessee on the legality of the penalty proceedings initiated u/s 271(1)(c) of the Act. Since the penalty u/s 271(1)(c) also has been dealt on the preliminary points other arguments of the assessee dealing with the merits of the levy of penalty are not been dealt with, as the same are rendered academic in nature and the appeal of the assessee for the Assessment Year 2008-09 is allowed".

19. We therefore in the given facts and circumstances of the case and respectfully following the above referred judgments of Hon'ble Apex Court, Hon'ble High jurisdictional Courts and other Hon'ble Courts and in view of the similarity of facts wherein the notice issued u/s 274 r.w.s 271(1)(c) of the Act is suffering from serious technical error and non application of mind by Ld.A.O who failed to

level specific charge on the assessee at the time of initiating penalty proceedings due to which the principle of natural justice seems not to have been followed. We accordingly allow the assessee's appeal on this legal ground and hold that the impugned penalty notices issued u/s 274 r.w.s. 271(1)(c) of the Act as invalid and untenable and thus deserves to be quashed which renders the penalty proceedings *void ab intio*.

20. We therefore allow the common legal ground raised by the assessee in these bunch of five appeals challenging the legality of notice issued u/s 274 r.w.s. 271(1)(c) of the Act and accordingly direct the Ld.A.O to delete the penalty levied u/s 271(1)(c) of the Act at Rs.15,000/-, Rs.20,000/-,Rs.26,000/-, Rs,46,00,000/-in respect of Shri Hemant Kumar Jain and Rs.32,00,000/- in respect of Shri Harish Jain 2010-11 to 2013-14 respectively.

21. As regards the remaining common grounds raised on merits we find that the same to be merely academic in nature and thus becomes infructuous as we have already held allowing the legal ground that the impugned show cause notice issued u/s 274 of the Act does not satisfy the requirement of law and deserves to be quashed.

22. In the result legal grounds of appeals of the assessee namely Shri Hemant Kumar Jain pertaining to Assessment Years 2010-11 to 2013-14 and that of Shri Harsh Jain for Assessment Year 2013-14 challenging the penalty levied u/s 271(1)(c) of the Act are allowed and grounds raised on merits are dismissed being infructuous.

23. Now we take up the other appeal relating to penalty levied u/s 271AAB of the Act in the case of Shri Hemant Kumar Jain and Shri Harsh Kumar Jain for Assessment Year 2014-15 and Assessment Year 2015-16 wherein following grounds are raised by Shri Hemant Kumar Jain (ITA No. 872/Ind/2018, Assessment Years 2014-15);

> *1.1 That the Ld. CIT(A) has grossly erred in confirming penalty u/s 271AAB of the Act at Rs.36,89,200/- which is not in accordance with the law and therefore penalty requires to be deleted.*
>
> *1.2 That the Ld. CIT(A) has erred in not accepting the assessee's contention and various judicial pronouncements therefore penalty requires to be deleted.*
> *2. That the appellant craves leave to adduce additional grounds and/or amend or withdraw any of the aforesaid grounds before, or at the time of hearing of appeal.*

ITA No. 873/Ind/2018
Assessment Years 2015-16

1.1 That the Ld. CIT(A) has grossly erred in confirming penalty u/s 271AAB of the Act at Rs.1,30,000/- which is not in accordance with the law and therefore penalty requires to be deleted.

1.2 That the Ld. CIT(A) has grossly erred in confirming penalty u/s 271AAB of the Act at Rs.1,20,000/- levied by A.O which is not in accordance with the law and therefore penalty requires to be deleted.

1.3 That the Ld. CIT(A) has erred in not accepting the assessee's contention and various judicial pronouncements therefore penalty requires to be deleted.
2. That the appellant craves leave to adduce additional grounds and/or amend or withdraw any of the aforesaid grounds before, or at the time of hearing of appeal.

Shri Harsh Jain
ITA No. 870/Ind/2018
Assessment Years 2014-15

1.1 That the Ld. CIT(A) has grossly erred in confirming penalty u/s 271AAB of the Act at Rs.46,62,900/- which is not in accordance with the law and therefore penalty requires to be deleted.

1.2 That the Ld. CIT(A) has erred in not accepting the assessee's contention and various judicial pronouncements therefore penalty requires to be deleted.
2. That the appellant craves leave to adduce additional grounds and/or amend or withdraw any of the aforesaid grounds before, or at the time of hearing of appeal.

Shri Harsh Jain
ITA No. 871/Ind/2018
Assessment Years 2015-16

1.1 That the Ld. CIT(A) has grossly erred in confirming penalty u/s 271AAB of the Act at Rs.43,54,700/- which is not in accordance with the law and therefore penalty requires to be deleted.

1.2 That the Ld. CIT(A) has erred in not accepting the assessee's contention and various judicial pronouncements therefore penalty requires to be deleted.

> *2. That the appellant craves leave to adduce additional grounds and/or amend or withdraw any of the aforesaid grounds before, or at the time of hearing of appeal.*

24. During the course of hearing Ld. Counsel for the assessee raised legal ground relying on the judgment of Hon'ble Apex Court in the case of National Thermal Power Company Limited 229 ITR 383(SC) challenging the validity of notice issued u/s 274 r.w.s. 271AAB of the Act claiming it to be illegal and bad in law.

25. Brief facts of the case relating to this year are that the returns were filed in reply to notice issued u/s 153A of the Act assessee declared income of Rs.3,73,87,550/-, Rs.26,16,270/- by Shri Hemant Kumar Jain and Rs. 2,38,13,380/- and Rs.18,33,070/- by Shri Harsh Jain for Assessment Years 2014-15 and 2015-16 respectively. Ld. A.O initiated the penalty proceedings u/s 271AAB of the Act and as per clause-c of this section computed the penalty of Rs.1,10,68,000/- and Rs.5,10,000/- in respect of Shri Hemant Kumar Jain and Rs.69,94,400/- and Rs.3,74,700/- @30% of the undisclosed income since it was not covered in clause (a) & (b) of Section 271AAB of the Act. Appeal by the assessee against the levy of penalty before Ld. CIT(A) went in vein.

26. Now the assessee is in appeal before the Tribunal challenging the order of Ld. CIT(A) confirming penalty u/s 271AAB of the Act raising legal ground as well as ground on merits.

27. Ld. Counsel for the assessee submitted that before levying the penalty u/s 271AAB of the Act Ld. A.O has to issue notice u/s 274 of the Act, as provided in Section 271AAB(3) of the Act. In the notice issued to the assessee there is no mention about the various conditions provided u/s 271 AAB of the Act relating to levy of penalty @ 10% or 20% or 30% (as the case may be). Nothing is specified in the notice about Clause-a, b & c of Section 271AAB of the Act as to at what percentage the penalty will be levied on the assessee for the undisclosed income not surrendered during the course of search. The assessee deserves an opportunity to plead before the Ld. A.O before being visited with the penalty u/s 271AAB of the Act. The alleged notice issued u/s 274 r.w.s 271AAB of the Act is liable to be quashed since there is a technical defect in issuing the notice. Reliance placed on the decision of Co-ordinate Bench, Chennai in the case of *DCIT V/s R. Elangovan 1199/CHNY/2017 order dated 05.04.2018* which has also been followed by Jaipur Bench of Tribunal in the case of *Ravi Mathur Vs.*

DCIT, ITA No.969/JP/2017 laying down *the proposition that show cause notice issued u/s 274 of the Act without drawing requisite levy of penalty u/s 271AAB of the Act is a defective notice and is liable to be quashed.*

28. Per contra Ld. Departmental Representative vehemently argued supporting the orders of lower authorities and also submitted that the legal issue raised by the assessee is liable to be dismissed since in the notice issued u/s 274 of the Act the Ld. A.O has specifically mentioned the section 271AAB of the Act and it may have been a clerical error on the part of the Ld. A.O to use the same proforma as used for issuing notice u/s 274 r.w.s. 271(1)(c) of the Act. On merits the assessee has no case since the alleged addition was not surrendered during the course of search, not included in the income tax return and taxes not paid and such undisclosed income has rightly been penalized @30% as per the provisions of Section 271 AAB(c) of the Act. Ld. Departmental Representative strongly relied on the judgment of Hon'ble Allahabad High Court in the case of *Pr. CIT vs. Sandeep Chandak (2018) 405 ITR 648.* This judgment of Hon'ble Allahabad High Court stands confirmed by Hon'ble Supreme Court also.

29. We have heard rival contentions and perused the records placed before us. The legal issue before us is that whether the notice issued u/s 274 r.w.s. 271AAB of the Act suffers from fatal error and technical defect thereby not providing an opportunity to the assessee to plead her case. Since the legal ground goes to be root cause of the issue levying penalty u/s 271AAB of the Act, we in view of the ratio held by the Hon'ble Apex Court in the case of *National Thermal Power Company Limited (supra)* admit the additional legal ground for adjudication. For levying penalty u/s 271AAB of the Act the Ld. A.O needs to primarily issue notice u/s 274 of the Act so for initiating proceedings u/s 271AAB of the Act the Ld. A.O has to first pass through the hurdle of Section 274 of the Act. For better understanding we reproduce the provisions of Section 271AAB and 274 of the Act which reads as follows:-

Section 271AAB.

'271AAB. Penalty where search has been initiated.—(1) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of July, 2012, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—

(a) a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year, if such assessee—

(i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;

(ii) substantiates the manner in which the undisclosed income was derived; and

(iii) on or before the specified date—

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

(b) a sum computed at the rate of twenty per cent of the undisclosed income of the specified previous year, if such assessee—

(i) in the course of the search, in a statement under sub-section (4) of section 132, does not admit the undisclosed income; and

(ii) on or before the specified date—

(A) declares such income in the return of income furnished for the specified previous year; and

(B) pays the tax, together with interest, if any, in respect of the undisclosed income;

(c) a sum which shall not be less than thirty per cent but which shall not exceed ninety per cent of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b).

(2) No penalty under the provisions of clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1).

(3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.

Explanation.—For the purposes of this section,—

(a) "specified date" means the due date of furnishing of return of income under sub-section (1) of section 139 or the date on which the period specified in the notice issued under section 153A for furnishing of return of income expires, as the case may be;

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

(i) which has ended before the date of search, but the date of furnishing the return of income under sub-section (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 date of search; or

(ii) in which search was conducted;

(c) "undisclosed income" means—

(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has—

(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or

(B) otherwise not been disclosed to the Chief Commissioner or Commissioner before the date of search; or

(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.'.

Section 274

(1) No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.
(2) No order imposing a penalty under this Chapter shall be made-
(a) by the Income- tax Officer, where the penalty exceeds ten thousand rupees;
(b) by the Assistant Commissioner, where the penalty exceeds twenty thousand rupees, except with the prior approval of the Deputy Commissioner.]
(3) An income- tax authority on making an order under this Chapter imposing a penalty, unless he is himself the Assessing Officer, shall forthwith send a copy of such order to the Assessing Officer']

30. From perusal of the above provision we observe that sub section 3 of Section 271AAB of the Act talks about issuing the notice u/s 274 of the Act. So for initiating the penalty proceedings u/s 271AAB of the Act the first step to be taken by Ld.A.O is to issue a valid notice u/s 274 of the Act. Sub-section (1) to Section 274 of the Act provides a procedure that *" No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard".* To comply with this requirement the notice u/s 274 should

be clear enough to convey the assessee about the charge which is to be leveled against him/her/it for levying the penalty for the contravention of the related provisions of the Act which in the instant case relates to not surrendering of undisclosed amount during the course of search which is subsequently admitted during the course of assessment and not challenged before the Ld. CIT(A). So it was incumbent for Ld. A.O that in the notice issued u/s 274 of the Act he should have mentioned that penalty u/s 271AAB of the Act may be levied @10/20/ 30% since the assessee falls in Clauses (a)/(b)/(c) of section 271AAB of the Act. He should have further mentioned that as the assessees case falls under clause-c of section 271AAB of the Act, why she should not be visited by penalty @30% of the undisclosed income. Against this charge the assessee should have been given a reasonable opportunity of being heard.

31. Now let us revert back to the fact of the instant case of the assessee and look into what was mentioned in the alleged notices issued u/s 274 r.w.s. 271AAB of the Act. It is not in dispute that for Assessment Year 2014-15 and Assessment Year 2015-16 similar

types of notices were issued in case of both the assessee(s). Notices are reproduced below;

NOTICE UNDER SECTION 274 READ WITH SECTION 271AAB OF THE INCOME TAX ACT, 1961

PAN. ADXPJ4863C

OFFICE OF THE
Asstt. Commissikoner of Income Tax (Central)-I, Indore

Date: 31.03.2016

To
Smt. Hemant Kumar Jain,
20 Parsi Mohalla,
Indore-452006

Whereas in the course of proceedings before me for the assessment year 2014-15 it appears to me that you :-

*Have without reasonable cause failed to furnish me return of income with you were required to furnish by a notice given under section 22(1)/22(2)/34 of the India Income Tax Act, 1922 or which you were required to furnish under section 193(1) or by a notice given under section 193(2)/148 of the Income Tax Act 1961, No. .... Dated..... or have without reasonable cause failed to furnish it within the allowed and the manner required by the side section 139(1) or by such notice.

*Have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the India Income Tax Act, 1922 or under section 142(1)/143(2) of the Income Tax Act 1961, No. dated

have concealed the particulars of your Income or furnished inaccurate particulars of such Income.

You are hereby requested to appear before me on 02.05.2016 at 03.30 PM 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 bearing heard in person or through authorized representative you may show cause in writing on or before the side date which will be considered before any such order is made under section 271AAB.

Sd/-
(Amit Kumar Soni)
Asstt. Commissioner of Income Tax (Central)-1
Indore

OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX (Central) -1, INDORE

Room No. 101, Aaykar Bhawan (Main), Opp. White Church, Indore

F.No. DCIT(Cen)-1/Ind/271AAB/ 16-17 Dated: 03/06/2016

PAN: **ADXPJ4863C**

To

Shri Hemant Kumar Jain

20, **Parsi Mohalla**

I ndore-452006

Sir,

Sub: Penalty fixation *u/s* 271AAB of the Income Tax Act, 1961 for the A.Y. 2014-15- reg.

Please refer to the penalty proceedings u/ s 271AAB of the Income Tax Act, 1961 for the A.Y. 2014-15 in the above mentioned case, you are hereby requested to appear before the undersigned on **10/06/2016 at 04.25 PM** in my office at Room No. 101, Aayakar Bhawan, Main, Opp. White Church, Indore personally or through authorized representative **to show cause as to why penalty u/s 271AAB of the I.T. Act, 1961 be not levied against you?** If you do not want to appear personally, you may send your written reply on or before above mentioned date, otherwise penalty proceedings shall be decided on merits.

Yours faithfully,
Sd/-
(Amit Kumar Soni)
Asstt. Commissioner of Income Tax (Central)-1
Indore

32. From going through the above notice issued to the assessee, we find that there is no mention about various conditions provided u/s 271 AAB of the Act. In the first notice dated 31.3.2016 the Ld. A.O has very casually used the proforma used for issuing notice before levying penalty u/s 271(1)(c) of the Act for the concealment of income or furnishing of inaccurate particulars of income. In the second notice dated 03.06.16 except mentioning the Section 271AAB of the Act in the notice it does not talk anything about various clauses of section 271AAB of the Act for levying penalty @10%/20%/30%. Certainly such notice has a fatal error and technically is not a correct notice in the eyes of law because it intends to penalize an assessee without spelling about the specific charge against the assessee.

33. Hon'ble Jurisdictional High Court in the case of *PCIT V/s Kulwant Singh Bhatia (supra)* dealt the issue of defective notice issued u/s 274 r.w.s. 271(1)(c) of the Act and Hon'ble court after relying judgment of Hon'ble Supreme Court in the case of CIT *V/s Manjunatha Cotton Ginning Factory and CIT v/s SSA'S Emerald Meadows (supra)* held that such show cause notices would not satisfy the requirement of law as notice was not specific. Merely

issuing notice in general proforma will negate the very purpose of natural justice. Hon'ble Apex Court in the case of *Dilip N Shraf 161 Taxmann 218* held that *"the quasi criminal proceedings u/s 271(1)(c) of the Act ought to comply with the principles of natural justice".*

34. In the case of *DCIT V/s R. Elangovan Ltd (supra)* , Co-ordinate Bench, Chennai while dealing with the legal ground challenging the validity of notice issued u/s 274 r.w.s. 271AAB of the Act had observed that ;

> *"It is clear from the Sub Section (3) of Section 271 AAB that Sections 274 and Section 275 of the Act shall, so far as may be, apply. Sub Section (1) of Section 274 of the Act mandates that order imposing penalty has to be imposed only after hearing the assessee or giving a assessee opportunity of hearing. Opportunity that is to be given to the assessee should be a meaningful one and not a farce. Notice issued to the assessee reproduced (supra), does not show whether penalty proceedings were initiated for concealment of income or for furnishing inaccurate particulars of income or for having undisclosed income within the meaning of Section 271AAB of the Act. Notice in our opinion was vague. Hon'ble Karnataka High Court in the case of SSA's Emerald Meadows (supra) relying in its own judgment in the case of Manjunatha Cotton and Ginning Factory (supra) had held as under:-*
>
> > *"2. This appeal has been filed raising the following substantial questions of law.*
> >
> > > *(1) Whether, omission if assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income*

makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under Section 274 r.w.S. 271(1)(c) is bad in law and invalid despite the amendment of Section 271 (1 B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?

(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deciding the appeals against the Revenue on the basis of notice issued under Section 274 without taking into consideration the assessment order When the assessing officer has specified that the assessee has concealed particulars of income?

3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271 (1)(c) of the Income Tax Act, 1961 (for short 'the Act,) to be bad in law as it did not specify Which limb of Section 271 (1)(c) of the Act, the penalty proceedings had been initiated i.e., Whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, While allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of CIT vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565.

4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed".

In the earlier case of Manjunatha Cotton and Ginning Factory (supra) their lordship had observed as under:-

> *"Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(l)(c) , i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law;*
>
> *The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice are offended. On the basis of such proceedings, no penalty could be imposed on the assessee) taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law; penalty proceedings are distinct from the assessment proceedings : though proceedings for imposition of penalty emanate from proceedings of assessment, they are independent and a separate aspect of the proceedings;*
>
> *The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the proceedings on the merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared invalid in the penalty proceedings".*

View taken by the Hon'ble Karnataka High Court in the above judgment was indirectly affirmed by the Hon'ble Apex Court, when it dismissed an SLP filed by the Revenue against the judgment in the case of SSA's Emerald Meadows (supra), specifically observing that there was no merits

> *in the petition filed by the Revenue. Considering the above cited judgments, we hold that the notice issued ujs.274 r.w.s. 271AAB of the Act, reproduced by us at para 5 above was not valid. Ex-consequenti, the penalty order is set aside.*

35. The view taken by the Co-ordinate Bench of Chennai in the case of *DCIT V/s R. Elangovan 1199/CHNY/2017 order dated 05.04.2018* has been subsequently followed by the Co-ordinate Bench of Jaipur in the case of *Ravi Mathur Vs. DCIT, ITA No.969/JP/2017* holding that such show cause notice issued u/s 274 r.w.s. 271AAB of the Act are not sustainable in law".

36. As regards to judgment of Hon'ble Allahabad High Court in the case of *Pr. CIT Vs Sandeep Chandak (supra)* which has been relied by the Departmental Representative is concerned, we find that in the decision rendered by the Co-ordinate Bench of Jaipur in the case of *Ravi Mathur Vs DCIT (supra)* wherein also similar issue of defective notice u/s 274 r.w.s. 271AAB was adjudicated, the judgment of Hon'ble Allahabad High Court in the case of *Pr. CIT Vs Sandeep Chandak (supra)* has been discussed and distinguished observing as follows:-

> *It is further submitted that in para 5 of this judgment (Ravi Mathur), the case quoted by ld CIT(A) Pr. CIT vs Sandeep Chandak (All.) was distinguished as under:*

"5. Before we proceed further, the decisions relied upon by the ld D/R are to be considered. In the case of Principal CIT vs Sandeep Chandak & Others [TS-6389-HC-2017(Allahabad)-O] (supra) the issue before the Hon'ble High Court was the defect in the notice issued under section 271AAB on account mentioning wrong provision of the Act being 271(1)(c) of the Act. The Hon'ble High Court after considering the fact that the show cause notice issued by the AO though mentions section 271(1) in the caption of the said notice, however, the body of the show cause notice clearly mentions section 271AAB, which was fully comprehended by the assessee as reveals in the reply filed by the assessee against the said show cause notice. Hence the Hon'ble High Court has held as under: -

"The ld A.Rs have also challenged that the caption of the notice mentioned only section 271 and not 271AAB. In this respect, the copy of notice has been produced by the ld. A.R. before me. It is seen that the ld A.R is correct in observing that the section of penalty has not been correctly mentioned by the AO in the caption. However, the AO will get the benefit of section 292BB of the Income Tax Act, 1961 because firstly, the assessee has raised no objection before the AO in this regard. Secondly, last line of the notice clearly mentions section 271AAB. Thirdly, the assessee has given reply to said notice which shows that the assessee fully comprehended the implication of the notice that it is for section 271AAB.

The assessee has also challenged that the principles of natural justice has not followed by the AO. The detailed submissions of A.R. in this regard has already been reproduced above. The A.R. did not produce any evidence to show that he was not given proper opportunity of hearing. It is clear from the penalty order that the AO has given notice and which was also replied by the assessee. Therefore, in my opinion, principle of natural justice has not been violated. Thus in view of above discussion penalty imposed by AO u/s. 271AAB of the Act is confirmed."

Thus it was found by the Hon'ble High Court that the mistake in mentioning the section in the show cause notice is covered under section 292BB and the AO will get the benefit of the same. The said decision will not help the case of the revenue so far as the isse involves the merits of levy of penalty under section 271AAB. As regards the decision of Kolkata Benches of the Tribunal in the case of DCIT vs Amit Agrawal (TS-7675-ITAT-2017(Kolkata)-O) (Supra), we find that the said decision was subsequently recalled by the Tribunal and a fresh order dated 14th March, 2018 was passed by

> *the Tribunal in favour of the assessee. Therefore, the decision relied upon by the Ld D/R is no more in existence."*

36. We, therefore respectfully following the judgment/decision referred above and in the given facts and circumstances of the case wherein the matter written in the body of the notice issued u/s 274 of the Act does not refer to the charges of provision of Section 271AAB of the Act makes the alleged notice defective and invalid and thus deserves to be quashed. Since the penalty proceedings itself has been quashed the impugned penalty of Rs.36,89,200/- and Rs.1,30,000in respect of Shri Hemant Kumar Jain and Rs.46,62,900/- and Rs.3,54,700/- in respect of Shri Harsh Jain for Assessment Year 2014-15 and Assessment Year 2015-16 respectively stands deleted. We accordingly allow the legal ground raised by the assessee challenging the validity of notice issued u/s 274 r.w.s. 271AAB of the Act and quash the penalty proceeding as *void ab intio*. In the result appeals of the assessee(s) for Assessment Years 2014-15 and 2015-16 are allowed on legal ground.

37. Since the penalty u/s 271AAB also have already been dealt and deleted on the preliminary legal points, other grounds and arguments of the assessee dealing with the merits of the levy of

penalty are not been dealt with, as the same are rendered academic in nature. Thus grounds raised on merits are dismissed as infructuous.

38. Now we take up ITA No.884/Ind/2018 at the instance of Revenue for Assessment Year 2014-15 raising following grounds of appeal as detailed below;

> 1. *Whether on the facts and in the circumstances of the case the Hon'ble'ble CIT(A) was justified in holding that penalty is leviable u/s 271AAB(1)(a) @10% instead of 271AAB(1)(c) while the assessee had failed to specify the manner in which such income has been derived.*
> 2. *The appellant craves leave to add to or deduct from or otherwise amend the above grounds of appeal.*

39. Brief facts relating to this appeal by revenue are that Ld. A.O levied penalty u/s 271AAB of the Act @30% of undisclosed income by applying clause(c) of sub section (1) of Section 271AAB of the Act by observing that the assessee has not specified the manner in which the income has derived. The assessee challenged the levy of penalty u/s 271AAB of the Act before Ld. CIT(A) who partly allowed the assessee's appeal by sustaining the penalty @10% of the undisclosed income as per Section 271AAB (1)(a) of the Act.

40. Now the revenue is in appeal before the Tribunal against the order of Ld. CIT(A).

41. We observe that while deciding the appeal of Shri Hemant Kumar Jain for Assessment Year 2014-15 vide ITA No.872/Ind/2018 we have held the penalty proceedings initiated by issuance of notice u/s 274 r.w.s. 271AAB of the act as *void ab intio* since the notice issued u/s 274 of the Act was defective because no specific charge about levying penalty @10%/20%/30% was leveled against the assessee before imposing penalty. Therefore since we have already allowed the assessee's legal ground for Assessment Year 2014-15 quashing the penalty proceedings initiated for levy of penalty u/s 271AAB of the Act for Assessment Year 2014-15 and deleted the penalty adjudication of the grounds raised on merits by the revenue in this appeal for Assessment Year 2014-15 will be merely academic in nature and thus becomes infructuous. Thus revenue's appeal is dismissed as infructuous.

42. In the result assessee(s) appeal ITA Nos. 730 to 734/ Ind/2018 & ITA Nos. 870 to 873/Ind/2018 allowed on legal ground and grounds on merits are dismissed as infructuous. Revenue's Appeal No. ITA No.884/Ind/2018 is dismissed as infructuous.

The order pronounced in the open Court on 05.02.2020.

Sd/- Sd/-

(KUL BHARAT) **(MANISH BORAD)**
JUDICIAL MEMBER **ACCOUNTANT MEMBER**

दिनांक /Dated : 05 February, 2020

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore