आयकर अपीलीय अधिकरण "I" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.2976/Mum/2016

(**निर्धारण वर्ष /** Assessment Year : 2011-12)

Shri Mahesh M. Gandhi, 303/304, Sholay Apartments, Raheja Complex, Seven Bungalows, Versova, Andheri (W), Mumbai – 400 061.	**बनाम**/ v.	Asst. Commissioner of Income Tax – 20(2), Mumbai.
स्थायी लेखा सं./PAN : AABPG3545P		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by :	Shri D.D. Jimulia
Revenue by :	Shri Saurabhkumar Rai,DR

सुनवाई की तारीख **/Date of Hearing : 04-01-2017**

घोषणा की तारीख /**Date of Pronouncement : 27-02-2017**

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 2976/Mum/2016, is directed against the appellate order dated 05-02-2016 passed by the learned Commissioner of Income Tax (Appeals)- 36, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2011-12, the appellate proceedings before the learned CIT(A) arising from the order dated 26-08-2014 passed u/s 271(1)(c) of the Income-tax Act,1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

> "1. (a) The learned Commissioner of Income Tax (Appeals) has erred in confirming the penalty levied on the appellant.
>
> (b) The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that there was no clarity at the time of initiation of the penalty proceedings as to relevant clause under which the penalty proceedings are initiated/applicable and hence the penalty order is void.
>
> (c) The appellant prays that the penalty order passed u/s 271(1)(c) be annulled/cancelled as void ab-initio.
>
> 2. (a) On merits, the learned Commissioner of Income Tax (Appeals) has erred in confirming the penalty levied on the appellant.
>
> (b) The learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that there was a genuine error and the income was inadvertently omitted to be considered in the computation and the appellant had filed the revised computation of income and paid the taxes with interest as applicable and there was no intent on the part of the appellant to furnish conceal income or furnish inaccurate particulars of his income as contemplated under section 271 (l)(c) of the Income Tax Act, 1961.
>
> (c) The appellant prays that the penalty levied u/s 271(l)(c) be deleted."

3. The brief facts of the case are that assessment in the case of the assessee was framed u/s 143(3) of the Act vide assessment order dated 20-02-2014 determining total income of the assessee at Rs. 4,49,05,250/- as against returned income of Rs. 4,32,81,605/- , wherein additions have been made on account of director's sitting fees to the tune of Rs. 4 lacs and short term capital gains to the tune of Rs. 12,23,642/- on redemption of HDFC Mutual funds which were not shown in return of income filed by the assessee. Penalty proceedings were initiated u/s 271(1)(c) of the Act in respect of

additions made by the assessee and notice dated 20-02-2014 u/s 274 r.w.s. 271(1)(c) of the Act was issued by the AO.

During the course of assessment proceedings u/s 143(3) r.w.s. 143(2) of the Act , it was observed by the A.O. that the assessee has received an amount of Rs. 3,80,000/- towards director's sitting fees which had not been offered for taxation by the assessee in computation of income filed with the Revenue. The assessee was show caused as to why director's sitting fees should not be added to the total income. In reply, the assessee vide his letter dated 10-02-2014 submitted as under:-

> "Directors Sitting Fees: Since I had not maintained books of accounts, the said income had escaped the working while finalizing my income tax return. The same can be added to my income and I will pay the appropriate tax on the same.
>
> As regards non disclosure of income, I would like to state that I am an honest assessee and the above mistake is only due to over sight and non maintenance of books of accounts. I would also like to draw your attention to the professional fees offered for tax. The entire income has been offered for tax and no expenses have been claimed against the same which also explains my intention is never to conceal income or not pay appropriate taxes."

The assessee filed revised computation of income offering Rs. 4 lacs as director's fees which was added to the total income of the assessee by the AO while framing assessment order dated 20-2-2014 passed u/s 143(3) of the Act. Penalty proceedings u/s 271(1)(c) of the Act was also initiated by the AO.

It was also observed by the A.O. during the course of assessment proceedings u/s 143(3) r.w.s. 143(2) of the Act that the assessee had received an amount of Rs. 31,39,368/- and Rs. 30,84,274/- on account of redemption of HDFC Growth Funds and HDFC Top 200 funds respectively. The assessee was

asked to explain whether he has shown capital gains in respect of the above redemption in his return of income filed with the Revenue or not. In reply, the assessee submitted as under:-

> "Redemption of Mutual Funds: Since I had not maintained books of accounts, the capital gains on redemption of Mutual Funds had escaped the working while finalizing my income tax return. The said capital gains can be added to my income and I will pay the appropriate tax on the same.
>
> As regards non disclosure of income, I would like to state that I am an honest assessee and the above mistake is only due to over sight and non maintenance of books of accounts. I would also like to draw your attention to the professional fees offered for tax. The entire income has been offered for tax and no expenses have been claimed against the same which also explains my intention is never to conceal income or not pay appropriate taxes."

The assessee had filed revised computation of income vide letter dated 18.02.2014 offering Rs.12,23,642/- under the head 'Short Term Capital Gains'. After considering assessee's explanation, the short term capital gain of Rs. 12,23,642/- was added by the AO to the total income of the assessee in the assessment order dated 20-02-2014 framed u/s 143(3) of the Act and penalty proceedings u/s. 271(1)(c) of the Act was initiated.

The assessee during the course of penalty proceedings u/s 271(1)(c) of the Act, on being asked, submitted before the AO that he did not maintained books of accounts during the year and due to oversight the same remained to be offered for taxation.

The A.O. rejected the contention of the assessee and observed that the assessee has not furnished any evidence during the assessment proceedings as well during penalty proceedings which could establish that there was a reasonable cause for not declaring the said incomes in his return of income

filed with the Revenue. It was observed by the AO that merely because the assessee has not maintained books of account cannot be a reasonable cause for not declaring of the said incomes in the return of income filed with Revenue. Moreover it was observed by the AO that the incomes involved are not meager amount that due to oversight the assessee left the same to be offered as income. It was observed by the AO that if the above income was left to be included in the return of income filed by the assesssee with the Revenue, the assessee could have come forward and filed revised return of income which was not done by the assessee as no revised return of income was filed by the assessee. It was observed by the AO that only when queried by the A.O., the assessee had come forward and declared the income by filing revised computation of income which shows that the assessee's intention of evading taxes by not disclosing the income in the return of income filed with the Revenue. Thus, the A.O. held that in the instant case mens rea is proved from the conduct of the assessee and that the assessee has concealed the income by furnishing inaccurate particulars of income and committed default u/s 271(1)(c) of the Act and this is a fit case for levy of penalty u/s 271(1)(c) of the Act, wherein the AO imposed penalty of Rs.3,13,000/- against the assessee u/s 271(1)(c) of the Act vide order dated 26-08-2014.

4. Aggrieved by the order dated 26-08-2014 passed by the A.O. u/s 271(1)(c) of the Act levying penalty of Rs.3,13,000/- against the assessee, the assessee carried the matter before the ld. CIT(A) in appeal who rejected the contentions of the assessee and confirmed the order dated 26-08-2014 passed by the A.O. u/s 271(1)(c) of the Act levying penalty of Rs.3,13,000/- against the assessee. The ld. CIT(A) relied upon several case laws as detailed in the appellate order dated 05-02-2016 and observed that the assessee has concealed income by way of furnishing of inaccurate particulars of income and the assessee failed to offer any cogent explanation in support of his claim. The assessee's argument that the mistake is only due to oversight for non-maintenance of

books of accounts was rejected by learned CIT(A) and learned CIT(A) observed that the assessee only offered said income when specifically confronted by the AO wherein the assessee only filed revised computation of income before the AO during assessment proceedings and not even filed revised return of income. Thus, the ld. CIT(A) held vide appellate orders dated 05-02-2016 that the assessee's case falls within the ambit of section 271(1)(c) of the Act and the A.O. was right in levying penalty of Rs. 3,13,000/- u/s 271(1)(c) of the Act.

5. Aggrieved by the appellate order dated 05-02-2016 passed by the ld. CIT(A), the assessee is in appeal before the tribunal.

6. The ld. Counsel for the assessee submitted that notice issued u/s 274 read with section 271(1)(c) of the Act does not specify the charge under which penalty proceedings were initiated i.e. whether the assessee is charged for concealing the particulars of income or is charged with furnishing of inaccurate particulars of income. Thus , it was submitted that the A.O. is not clear about the charge against the assessee for levy of penalty u/s 271(1)(c) of the Act and in the absence of the specific charge with which the assessee is being sought to be burdened , the whole proceedings are vitiated and are bad in law liable to be quashed. The learned counsel for the assessee drew our attention to notice dated 20-02-2014 u/s 274 read with Section 271(1)(c) of the Act issued by the AO , which is placed in paper book/page 3 filed with the tribunal. In support of his contention, the ld. Counsel for the assessee relied upon the order dated 21-12-2016 of the Mumbai Benches of the tribunal in the case of Dr. Sarita Milind Davare v. ACIT for assessment year 2009-10, which order of the tribunal is placed in file. He submitted that the assessee is a salaried employee as well had income from profession. It was submitted that there was only one/single receipt of professional fee of Rs.2,73,75,00/- from abroad which was subjected to tax audit. It was submitted that no

expenses were claimed against these professional income and this shows that the assessee is an honest tax-payer and has no intention of suppressing income . The extracts of copies of computation of income and tax audit report are placed in paper book/page17-24 filed with the tribunal and to buttress his arguments , our attention was drawn to these extracts although complete tax audit report etc. are not placed in paper book filed with the tribunal. It was submitted that the tax audit report dated 30-09-2011 was received by the assessee only on 30th September, 2011 which happens to be the last date for filing of return of income as stipulated u/s 139(1) of the Act and the assessee had to file the return in a hurry on 30-09-2011 itself and assessee inadvertently missed out including the director's sitting fees and the short term capital gains earned by the assessee from mutual funds in the return of income filed with the Revenue on 30-09-2011, wherein it was submitted that there was no mens rea or malafide on the part of the assessee to conceal said income from the Revenue with an intention to evade taxes. When the mistake was brought to the assessee's knowledge by the AO during the course of assessment proceedings u/s 143(3) of the Act read with Section 143(2) of the Act , the assessee immediately filed revised computation of income and paid due taxes to the Revenue with interest. He submitted that the assessee being a salaried employee, this mistake was inadvertent and not willful and rather it was an error which occurred inadvertently. Thus, it is submitted that there is no application of mind by the A.O. before issuing notice dated 20-02-2014 u/s 274 r.w.s. 271(1)(c) of the Act in an mechanical manner without application of mind. Our attention was also drawn to the order of ITAT, Kolkata bench in the case of Chandra Prakash Bubna v. ITO reported in [2015] 64 taxmann.com 155 and submitted that the assessee being an honest taxpayer and the mistake had inadvertently crept in the return of income which was immediately rectified once the AO brought the same to the notice of the assessee wherein the assessee filed revised computation of income during the course of assessment proceedings and paid the due taxes with

interest to the Revenue once the error was pointed to the assessee by the AO during the course of assessment proceedings u/s 143(3) r.w.s. 143(2) of the Act. It was submitted that since no books of account were maintained by the assessee thence the error took place and when the error came to the notice of the AO , taxes along with interest were paid to the Revenue.

7. The ld. D.R., on the other hand, submitted that the assessee has concealed his income by furnishing inaccurate particulars of income. The assessee has not raised this legal ground before ld. CIT(A) regarding non-specification of charge under which penalty proceedings were initiated by the AO and it is for the first time before the tribunal that said legal contentions were raised . He drew our attention to the grounds of appeal filed before the learned CIT(A) as well to the appellate order dated 05-02-2016 passed by learned CIT(A). It was submitted by learned DR that is a willful mistake committed by the assessee to evade taxes and once the assessee was cornered and confronted by Revenue , the assessee came forward and filed revised computation of income and paid taxes.It was submitted by learned DR that only very less percentage of returns of income are selected for scrutiny and in case the return of income of the assessee was not selected for scrutiny, this non declaration of income would have gone un-noticed and taxes would have been successfully evaded by the assessee. It was submitted that both the heads of income which were not declared to the Revenue by the assessee in return of income filed , were not subjected to tax deduction at source and hence , the Revenue did not had knowledge of these income earned by the assessee but for scrutiny assessment u/s 143(3) r.w.s. 143(2) of the Act, this tax evasion came to the notice of the Revenue. It was submitted that the assessee cannot say that this is an inadvertent mistake and it is only when the assessee was cornered by the Revenue , the assessee came forward to file revised computation of income by including director sitting fee and short term capital gains and pay due taxes.

8. We have considered rival contentions and also perused the material available on record including case laws relied upon by the rival parties. We have observed that the assessee is a salaried employee. We have also observed that the assessee also received professional income of Rs. 2,73,75,000/- from abroad in a single shot payment and it was claimed that no expenses had been incurred against this professional income. The assessee got tax-audit conducted by a qualified chartered accountant as prescribed u/s 44AB of the Act w.r.t. professional receipts. The case was selected for scrutiny by Revenue for framing assessment u/s 143(3) of the Act. The A.O. during course of assessment proceedings u/s 143(3) read with Section 143(2) of the Act observed that the assessee has not disclosed income on account of Directors sitting fee of Rs. 4 lacs and Short term capital gain of Rs. 12,23,642/- earned by the assessee during the previous year relevant to the impugned assessment year in the return of income filed with the Revenue and on being cornered and confronted by the Revenue , the assessee had admitted having earned the said income(s) by filing revised computation of income during the course of assessment proceedings . On being asked the assessee stated before the AO that inadvertently due to mistake the said income(s) were not disclosed in the return of income filed with the Revenue. The assessee also submitted that one of the reasons for these inadvertent mistake's were not maintenance of books of accounts by the assessee and also due to the fact that tax-audit as prescribed u/s 44AB of the Act was completed only on 30-09-2011 which happened to be the last date of filing of return of income as stipulated u/s 139(1) of the Act and the return of income was filed on 30-09-2011 in haste/hurry. When cornered and confronted by the AO during the course of assessment proceedings u/s 143(3) r.w.s. 143(2) of the Act , the assessee filed revised computation of income and paid due taxes along-with interest on these income earned by the assessee viz. Director Sitting fee of Rs. 4,00,000/- and Short term capital gains of Rs.12,32,642/-

on redemption of HDFC Mutual funds. It is claimed by the assessee that the assessee is an honest taxpayer, the assessee having paid the taxes along with interest immediately on coming to know of the mistake of having omitted to have declared these income of director sitting fee of Rs. 4,00,000/- and short term capital gains of Rs.12,32,642/- arising from redemption of HDFC mutual funds. The plea of the assessee that books of account were not maintained or the tax-audit report was received on the last date of filing of return of income on 30-09-2011 which led to inadvertent mistake cannot be accepted as the assessee was fully aware of the receipt of income of director sitting fee of Rs 4,00,000/- as well capital gains arising from redemption of HDFC mutual funds to the tune of Rs.31,39,368/- and Rs. 30,84,274/- which by no means are meager amounts which can be claimed to have skipped the attention of the assessee in ordinary and normal course while filing return of income with the Revenue more so that assessee is deriving income mainly from salaries and also that the professional receipt of Rs. 2,73,75,000/- received by the assessee during the previous year is earned from abroad which is in the form of single shot receipt in the bank and that too no expenses were claimed by the assessee against this professional receipt. Thus under the afore-stated circumstances , no elaborate records would have been generated in the course of his professional receipts as being single receipt in bank with no expenses being claimed and also other incomes such as salary etc which could have lead to the assessee being overburdened so that it led to omitting in including director sitting fee as well capital gains on redemption of Mutual Fund in the declaration of income in the return of income filed with the Revenue. It is only when the assessee was cornered and confronted by the A.O., the assessee came forward with the revised computation of income and paid due taxes to the Revenue. This, in our considered view in the instant appeal based on facts and circumstances of the case is not a reasonable and bonafide cause for non-declaration of income in the return of income filed with the revenue to get out of rigors of Section

271(1)(c) of the Act, keeping in view peculiar facts and circumstances of the case.

The assessee had also raised a legal ground that no specific charge has been framed by the Revenue against the assessee while initiating penalty proceedings u/s 271(1)(c) of the Act r.w.s. 274 of the Act as to whether the assessee did concealed the particulars of income or furnished in-accurate particulars of income and in the absence thereof, the penalty proceedings, in the opinion of the assessee are not sustainable in law. We have gone through notice dated 20-02-2014 issued by the AO u/s 274 read with Section 271(1)(c) of the Act which is reproduced hereunder and it reads as under:-

"Office of : JCIT 20(2), MUMBAI

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

File No. 10 *Dated : 20/02/2014*

PAN : AABPG3545P

To

SHRI MAHESH MANILAL GANDHI,
304,
SHOLAY REHEJA COMPLEX
SEVEN BUNGLOW
ANDHERI-W
MUMBAI
MAHARASHTRA 400061

Sir/Madam,

Whereas in the course of proceedings before me for the assessment year 2011-12, it appears that you have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are hereby requested to appear before me on 19/03/2014 at 11:30 AM and show cause why an order imposing a penalty on you should not be made under Section 271(1)(c) of the Income Tax Act, 1961. If no one attends this office on the said date the case shall be decided on the basis of material available on records.

Yours faithfully

Sd/-

(P. K. SINGH)
JCIT 20 (2) ,MUMBAI

Seal office of:

Date and time of attending:
19- MAR – 14 at 11.30"

It is pertinent to mention here that the above notice dated 20-02-2014 issued by the AO u/s 274 read with section 271(1)(c) of the Act is not a standard printed format but is a typed notice issued to the assessee. We have observed that the assessee has raised legal ground for the first time regarding non–framing of specific charge against the assessee by the AO w.r.t. whether the assessee concealed the particulars of income or furnished inaccurate particulars of income. The law-makers have inserted sub-section (1B) to Section 271 of the Act by Finance Act, 2008 , w.e.f. 01-04-1989 wherein it is provided that where any amount is added or disallowed in computing the total income or loss of an tax-payer in any order of assessment or reassessment and the said order contains a direction for initiation of penalty proceedings under clause (c) of sub-section (1) , such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings under the said clause 271(1)(c) of the Act. In the assessment order dated 20-02-2014 passed by the AO u/s 143(3) of the Act, the AO has duly recorded detailed well reasoned satisfaction before invoking provisions of Section 271(1)(c) of the Act with respect to both the additions made in the assessment order dated 20-02-2014 passed u/s 143(3) of the Act which shows application of mind by the AO , wherein the AO recorded as under :

"5....
***
***
The assessee has vide letter dated 18.02.2014 filed revised computation of income offering Rs. 4,00,000/- as director's sitting fees. The explanation

submitted by the assessee is considered . It is noted that the assessee has made disclosure of income of Rs. 4,00,000/- only after the assessee was asked to explain the same. The assessee did not pointed out voluntarily after receipt of statutory notice u/s 143(3) which was issued after one year of filing of return of income. Even after that when the case was under hearing, the assessee did not offer the income of Rs.4,00,000/- being director's sitting fees unless he was specifically asked to explain the same. It is , therefore evident from the conduct of the assessee that he was trying to evade the income to the extent of Rs. 4,00,000/-. Considering these facts, income of Rs. 4,00,000/- is assessed under the head income from business. Considering these facts, I am satisfied that the assessee has concealed his income by furnishing inaccurate particulars of income to the extent of Rs. 4,00,000/- and thus penalty proceedings u/s 271(1)(c) of the I T Act, 1961 is initiated separately on this point.

6.....
***
***
The assessee has vide letter dated 18.02.2014 filed revised computation of income offering Rs.12,23,642/- under the head 'Short Term Capital Gains' . The explanation submitted by the assessee is considered. It is noted that the assessee has made disclosure of income of Rs.12,23,642/- only after the assessee was asked to explain the same. The assessee did not pointed out voluntarily after receipt of statutory notice u/s 143(2) which was issued after one year of filing of return of income. Even after that when the case was under hearing, the assessee did not offer the income of Rs.12,23,642/- being redemption of HDFC Mutual Fund unless he was specifically asked to explain the same. It is , therefore evident from the conduct of the assessee that he was trying to evade the income to the extent of Rs.12,23,642/- . Considering these facts, income of Rs.12,23,642/- is assessed under the head income from capital gain. In view of the above facts, I am satisfied that the assessee has concealed his income by furnishing inaccurate particulars of income to the extent of Rs.12,23,642/- and thus penalty proceedings u/s 271(1)(c) if the I T Act, 1961 is initiated separately on this point."

It is also pertinent to refer to the judgment of Hon'ble Karnataka High Court in the case of CIT v. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Kar. HC) wherein the Hon'ble Karnataka High Court held as under :

"DEEMING PROVISION

48. *As the opening words of Explanation 1 makes it clear where in respect of any facts material to the computation of the total income of any person under this Act such person fails to offer an explanation or offers an explanation which is found to be false or offers an explanation which is not able to substantiate and fails to prove that such*

explanation is bona fide, then the amount added or disallowed in computing the total income of such person as a result thereof shall for the purposes of clause (c) of this sub-section be deemed to represent the income in respect of which particulars have been concealed. Therefore, it is clear that aforesaid instances by itself do not constitute concealment. The Assessing Officers were just writing at the end of the assessment order that penalty proceedings are initiated or something to the effect. The Delhi High Court in the case of Ram Commercials has held that such a note alone in the assessment order does not satisfy the requirement of assuming jurisdiction in law in respect of the initiation of penalty proceedings. The satisfaction should be in the assessment order. The said view was also approved by the full Bench of the Delhi High Court in the case of CIT v. Rampur Engg. [2009] 309 ITR 143/176 Taxman 211. The said view has been approved by the Apex Court in the case of Dilip N. Shroff (supra). That is the view the courts have consistently taken. After taking note of the judicial pronouncements in this regard, the Legislature thought it fit to insert Section 271(1)(B), which reads as under:

> *"271.(1)(B) Where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and the said order contains a direction for initiation of penalty proceedings under clause (c) of sub-Section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings under the said clause (c)."*

***49.** By the aforesaid deeming provision a legal fiction is created. When the assessment order contains a direction for initiation of penalty proceedings such order shall deem to constitute satisfaction of the Assessing Officer for initiation of penalty proceedings under sub-clause (c) of Section 271 of the Act. As the language of Section 271 makes it clear before a direction is issued to pay penalty, the person issuing the direction must be satisfied about the condition mentioned in clause (c) of Section 271(1). The question is, whether such satisfaction should be in writing. As the satisfaction has to be in the course of any proceedings and it is at the time of computation of the total income of any person and as it results in an assessment order which has to be mandatorily in writing, the satisfaction should be found in the said order. The existence of these facts is a condition precedent for initiation of penalty proceedings under Section 271. This provision is attracted once in any such assessment orders, a direction for initiation of penalty proceedings under clause (c) of sub-section (1) is made. Thereby, it means even if the order does not contain a specific finding that the assessee has concealed income or he is deemed to have concealed income because of the existence of facts which are set out in Explanation 1, if a mere direction to initiate penalty proceedings under clause (c) of sub-section (1) is found in the said order, by legal fiction, it shall be deemed to constitute satisfaction of the Assessing Officer for initiation of penalty proceedings under said clause (c). The said provision came up for interpretation by the Delhi High Court in the case of Ms. Madhushree Gupta v. Union of India [2009] 317 ITR 107/183 Taxman 100 wherein the Delhi High Court held that the satisfaction should be*

discernible in the assessment order. Position post amendment is not in much variance with pre-amendment. They held that provisions will fall foul of Article 14 of the Constitution if the same is not read in the manner it has read and in fact has read down the provisions to hold it Constitutional. Therefore according to Delhi High Court, in post amendment and pre-amendment there is not much difference and the satisfaction is required to arrive in the course of assessment proceedings and should be discernible in the assessment order. Therefore, this provision makes it abundantly clear that satisfaction of the Assessing Officer before initiation of penalty proceedings is a must. The satisfaction should be that he has concealed particulars of his income or furnished inaccurate particular of such income and even in the absence of those expressed words or findings recorded in the Assessment proceedings, if a direction as aforesaid is mentioned, it constitutes satisfaction of the Assessing Officer.

DIRECTION

50. *A reading of Section clearly indicates that the assessment order should contain a direction for initiation of penalty proceedings. The meaning of the word direction is of importance. Merely saying that penalty proceedings are being initiated will not satisfy the requirement. The direction to initiate proceedings should be clear and not be ambiguous. It is well settled law that fiscal statutes are to be construed strictly and more so the deeming provisions by way of legal fiction are to be construed more strictly. They have to be interpreted only for the said issue for which it has deemed and the manner in which the deeming has been contemplated to be restricted in the manner sought to be deemed. As the words used in the legal fiction or the deeming provisions of Section 271(1B) is Direction, it is imperative that the assessment order contains a direction. Use of the phrases like (a) penalty proceedings are being initiated separately and (b) penalty proceedings under Section 271(l)(c) are initiated separately, do not comply with the meaning of the word direction as contemplated even in the amended provisions of law. The direction should be clear and without any ambiguity. The word 'direction' has been interpreted by the decision of the Apex Court in the case of Rajendranath 120 ITR pg.14,where it has been held that in any event whatever else it may amount to, on its very terms the observation that the ITO is free to take action, to assess the excess in the hand of the co-owners cannot be described as a direction. A direction by a statutory authority is in the nature of an order requiring positive compliance. When it is left to the option and discretion of the ITO whether or not take action, it cannot be described as a direction.*

51. *Therefore, it is settled law that in the absence of the existence of these conditions in the assessment order penalty proceedings could not be proceeded with. The proceedings which are initiated contrary to the said legal position are liable to be set aside.*

WHEN DEEMING PROVISION NOT APPLICABLE

52. *Sub-section (1)(B) only deals with satisfaction of the Assessing Officer. However, under the scheme of Section 271, the persons who are authorised to compute income as well as initiate the proceedings or the Assessing Officer or the Commissioner of*

Appeals or Commissioner in the course of revisional jurisdiction, Explanation 1 applies to all these three Officers whereas the deeming provision (1)(B) refers only to the Assessing Officer. Therefore, if an order of assessment is passed by Commissioner of Appeals or Commissioner in the course of the said proceedings, if they are satisfied that there is any concealment of particulars of his income or he has furnished inaccurate particular of income the said satisfaction must be expressly stated in the said order. If that is not stated, at least, the order should state what is mentioned in Explanation 1. It is only if those facts are set out in the order, then the deeming provision in Explanation 1 applies and the concealment of income could be presumed and then they are entitled to initiate penalty proceedings under Section 271. If the said order do not disclose the facts set out in Explanation 1, they are not entitled to the benefit of deeming provision contained in provision (1)(B). The said deeming provision is confined only to the Assessing Officer.

53. *From these discussion, it is clear that condition precedent for initiation of penalty proceedings under Section 271(l)(c) is existence of condition referred to in the said section. The person initiating penalty proceedings should be satisfied about the existence of said conditions which should be reflected in the assessment orders passed by them. In a given case, after appreciating the entire records, the Officer passing the order may categorically state that he is satisfied that the assessee has concealed income. Once such a finding is recorded that is sufficient to initiate penalty proceedings. Assuming such a categorical finding is not recorded in the order, at least, he has to record facts as contemplated in Explanation 1. If these facts are discernible from the assessment order, the deeming clause in Explanation 1 is attracted and the income is deemed to have been concealed. That gives the jurisdiction to the Officer passing the order to initiate the penalty proceedings. If the Officer passing the assessment order is the Assessment Officer, in the said order, the aforesaid facts are not discernible, at least he must direct initiation of proceedings under Section 271(l)(c). Then Section (1)(B) is attracted and these conditions deemed to exist which confers jurisdiction on him to initiate penalty proceedings. Section (1)(B) has no application to an order passed by Commissioner of Appeals or Commissioner.*

WHO INITIATES PENALTY PROCEEDINGS

54. *As is clear from the words in Section 271, if the Assessing Officer or the Commissioner of Appeals or the Commissioner in the course of any proceedings under this Act is satisfied that any person has concealed particulars of his income or furnished inaccurate particulars of his income, he may direct that such person shall pay by way of penalty the amount mentioned therein. Therefore, the penalty proceedings have to be initiated by the person who is satisfied about the concealment of income or furnishing of inaccurate particulars of income in the course of any proceedings under this Act. In a given case if the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal or in revision, the authority is satisfied regarding concealment and furnishing of inaccurate particulars, then it is that authority which is satisfied about the said concealment or furnishing of*

inaccurate particulars has to initiate penalty proceedings and then pass orders in respect of the penalty to be imposed. The imposition of penalty may be done at the stage of assessment or at the stage of an appeal. At the assessment stage, the Assessing Officer has to issue a notice to the assessee to show cause why a penalty should not be imposed and this notice has to be issued in the course of the assessment proceedings. The imposition of the penalty has also to be done by the Assessing Officer but this can be done within the time prescribed in section 275.

***55.** In the case of initiation of penalty proceedings during the course of appeal or revision proceedings, the authority who has to be satisfied is the authority in whose proceedings the issue is examined and not any other authority. The levy of penalty has also to be done by the same officer as the language used in the later part of Section 271 is that: "He may direct that such person shall pay by way of penalty". The authority in which proceedings, there is satisfaction of concealment or furnishing inaccurate particulars of income alone can levy the penalty and not any other authority. If the Commissioner (Appeals) in the course of appeal proceedings is satisfied then it is the Commissioner (Appeals) who have to initiate the penalty proceedings and also complete the same by levying the penalty. He cannot permit the assessing authority to levy penalty.*

***56.** Provisions of Section 274(3) makes it clear that if an authority other than the Assessing Officer passes an order under Chapter XXI which deals with matters of penalties then such authority has to forthwith send the copy of the order to the Assessing Officer. This fortifies that it is the authority who is satisfied in the course of the proceedings before it has the jurisdiction to initiate and levy of penalty. The Allahabad High Court in the case of Motilal Shamsundar v. CIT [1972] 84 ITR 186 held that when the amounts were discovered in the course of appellate proceedings before him, it was discovered by him. It was for him then to impose the penalty. If he was satisfied that the assessee had concealed the particulars of his income or had deliberately furnished inaccurate particulars of it.*

***57.** The question of their recording satisfaction and then calling upon the Assessing Officer to initiate penalty proceedings would not arise. Penalty proceedings has to be initiated by the authority which is satisfied about the concealment of the particulars of the income or furnishing of inaccurate particulars of income.*

PROCEDURE FOR IMPOSING PENALTY

***58. It must be noticed that this finding recording concealment in the order to be passed by these authorities is only for the purpose of initiating. The said finding is not conclusive; it is in the nature of prima facie satisfaction, which authorises them to initiate the penalty proceedings.** Once a penalty proceedings is validly initiated, then under Section 274(1) an obligation is cast on the person initiating the proceedings to issue notice to the assessee. When such a notice is issued, it is open to the assessee to contest the accusation against him that he has concealed income or he has furnished inaccurate particulars. As there is an initial presumption of concealment, it is for the assessee to rebut the said presumption. The presumption found in Explanation 1 is a*

rebuttable presumption. If the authority, after hearing the assessee and looking into the material produced in the said proceedings before him is satisfied that though the income is undisclosed there was no intent to avoid tax and therefore, if he holds there is no concealment of income, then question of imposing penalty would not arise. It may be a case of not disclosing income without any intent to avoid tax; it may be a case of furnishing particulars without any intention to avoiding tax. Both stand on the same footing. ***It is only when the authority is satisfied that non-disclosure of income or furnishing inaccurate particulars was with the intention of evading tax, then it amount to concealment, it amounts to furnishing inaccurate particulars. Then, at his discretion, he may impose penalty as provided under the Act****. Therefore, merely because the assessee accepted addition or deletion and did not challenge the assessment order by way of appeal, it cannot be concluded that such addition or deletion amounts to concealment of income or furnishing of inaccurate particulars. When a plea is taken that in order to avoid litigation and purchase peace, the tax levied is paid with interest, if the assessee is able to demonstrate his bona fides and if the authority is satisfied about his bonafides, then the question of imposing penalty would not arise. Similarly, in cases where though the tax was not actually due but still the assessee pays tax with a hope of claiming deductions in the subsequent years, if the assessee is able to demonstrate there was no liability to pay tax at all, merely if assessee pays tax and he does not challenge order, that would not constitute concealment of income so as to enable the authorities to impose penalty. Similarly, in cases, where the legal position is not well settled, when few High Courts and Tribunals have taken a view in favour of the assessee and some High Courts and Tribunals have taken a view in favour of the Revenue and on legal advice if an assessee relies on the said legal position for not disclosing the income and for non-payment of tax, certainly, that is a fact which should weigh in the penalty proceedings after the assesee has paid tax with interest before imposing penalty.*

NOTICE UNDER SECTION 274

59. *As the provision stands, the penalty proceedings can be initiated on various ground set out therein. If the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under Section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on deeming provision contained in Explanation 1 or in Explanation 1(B), then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in Section 271 should be made known about the grounds on which they intend imposing penalty on him as the Section 274 makes it clear that assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in Section 271(l)(c) do not exist as such he is not liable to pay penalty. The*

practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under Section 274 should satisfy the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended if the show cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.

60. *Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income**. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(l)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground.** Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.*

61. *The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income are different. Thus the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars. The Apex Court in the case of T. Ashok Pai v. CIT [2007] 292 ITR 11/161 Taxman 340 at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of CIT v. Manu Engg. [1980] 122 ITR 306 and the Delhi High Court in the case of CIT v. Virgo*

Marketing (P.) Ltd. [2008] 171 Taxman 156, has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind.

INDEPENDENT PROCEEDING

62. *The penalty proceedings are distinct from assessment proceedings, and independent therefrom. The assessment proceedings are taxing proceedings. The proceedings for imposition of penalty though emanating from proceedings of assessment are independent and separate aspects of the proceeding. Separate provision is made for the imposition of penalty and separate notices of demand are made for recovery of tax and amount of penalty. Also separate appeal is provided against order of imposition of penalty. Above all, normally, assessment proceedings must precede penalty proceedings. Assessee is entitled to submit fresh evidence in the course of penalty proceedings. It is because penalty proceedings are independent proceedings. The assessee cannot question the assessment jurisdiction in penalty proceedings. Jurisdiction under penalty proceedings can only be limited to the issue of penalty, so that validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter in penalty proceedings. It is not possible to give a finding that the reassessment is invalid in such penalty proceedings. Clearly, there is no identity between the assessment proceedings and the penalty proceedings. The latter are separate proceedings that may, in some cases, follow as a consequence of the assessment proceedings. Though it is usual for the Assessing Officer to record in the assessment order that penalty proceedings are being initiated, this is more a matter of convenience than of legal requirement. All that the law requires, so far as the penalty proceedings are concerned, is that they should be initiated in the course of the proceedings for assessment. It is sufficient, if there is some record somewhere, even apart from the assessment order itself, that the Assessing Officer has recorded his satisfaction that the assessee is guilty of concealment or other default for which penalty action is called for. Indeed, in certain cases, it is possible for the Assessing Officer to issue a penalty notice or initiate penalty proceedings even long before the assessment is completed. There is no statutory requirement that the penalty order should precede or be simultaneous with the assessment order. In point of fact, having regard to the mode of computation of penalty outlined in the statute, the actual penalty order cannot be passed until the assessment is finalised.*

CONCLUSION

63. *In the light of what is stated above, what emerges is as under:*

(a) Penalty under Section 271(l)(c) is a civil liability.

(b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.

(c) Wilful concealment is not an essential ingredient for attracting civil liability.

(d) Existence of conditions stipulated in Section 271(l)(c) is a sine qua non for initiation of penalty proceedings under Section 271.

(e) The existence of such conditions should be discernible from the Assessment Order or order of the Appellate Authority or Revisional Authority.

(f) Even if there is no specific finding regarding the existence of the conditions mentioned in Section 271(l)(c), at least the facts set out in Explanation 1(A) & (B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision.

(g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under Section 271(l)(c) is a sine qua non for the Assessment Officer to initiate the proceedings because of the deeming provision contained in Section 1(B).

(h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Appeals and the Commissioner.

(i) The imposition of penalty is not automatic.

(j) Imposition of penalty even if the tax liability is admitted is not automatic.

(k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the Assessing Officer in the assessment order.

(l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bonafide, an order imposing penalty could be passed.

(m) If the explanation offered, even though not substantiated by the assessee, but is found to be bonafide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.

(n) The direction referred to in Explanation IB to Section 271 of the Act should be clear and without any ambiguity.

(o) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the Assessing Authority.

(p) 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

(q) Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law.

(r) The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. On the basis of such proceedings no penalty could be imposed to the assessee.

(s) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.

(t) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.

(u) The findings recorded in the assessment proceedings insofar 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 said proceedings on 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 as invalid in the penalty proceedings."

We do not find any infirmity in the notice dated 20-02-2014 issued by the A.O. u/s 271(1)(c) r.w.s. 274 of the Act wherein the AO has clearly framed an alternate charges for levying penalty u/s 271(1)(c) of the Act at the stage of issue of notice u/s 274 r.w.s. 271(1)(c) of the Act.More-so it is not a standard printed format which is sent to the assessee rather the same is specifically drafted by the AO before sending to the assessee which showed application of mind by the AO . It is also not the case that the AO has framed charge under one limb of Section 271(1)(c) of the Act and levied the penalty under the second limb of Section 271(1)(c) of the Act. The assessment order dated 20-02-2014 also clearly showed application of mind by the AO before initiating penalty proceedings u/s 271(1)(c) of the Act.

In the case laws cited by the assessee in the case of Dr. Sarita Milind Davare v. ACIT (supra), the notice issued u/s 271(1)(c) of the Act was primarily meant

to ask the tax-payer to furnish a return of income and merely AO modified the last paragraph by show causing the tax-payer to explain as to why an order imposing a penalty should not be made u/s 271(1)(c) of the Act . In the case of Chandra Prakash Bubna(supra) relied upon by the assessee , it was the case where penalty notice simply stated as under:

"I am satisfied that this is a fit case where provisions of Section 271(1)(c) of the Income Tax Act are clearly attract".

While in the instant appeal the AO has issued notice u/s. 274 read with Section 271(1)(c) of the Act dated 20-02-2014 wherein the AO recorded as under:

> *"Whereas in the course of proceedings before me for the assessment year 2011-12, it appears that you have concealed the particulars of your income or furnished inaccurate particulars of such income."*

In the instant appeal , the AO has recorded satisfaction in detail in the assessment order dated 20-02-2014 before invoking penalty provisions u/s 271(1)(c) of the Act by recording as under:-

"5....

***

***

> The assessee has vide letter dated 18.02.2014 filed revised computation of income offering Rs. 4,00,000/- as director's sitting fees. The explanation submitted by the assessee is considered . It is noted that the assessee has made disclosure of income of Rs. 4,00,000/- only after the assessee was asked to explain the same. The assessee did not pointed out voluntarily after receipt of statutory notice u/s 143(3) which was issued after one year of filing of return of income. Even after that when the case was under hearing, the assessee did not offer the income of Rs.4,00,000/- being director's sitting fees unless he was specifically asked to explain the same. It is , therefore evident from the conduct of the assessee that he was trying to evade the income to the extent of Rs. 4,00,000/-. Considering these facts, income of Rs. 4,00,000/- is assessed under the head income from business. Considering these facts, I am satisfied that the assessee has concealed his income by furnishing inaccurate particulars of income to the extent of Rs. 4,00,000/- and thus penalty proceedings u/s 271(1)(c) of the I T Act, 1961 is initiated separately on this point.

> 6.....
> ***
> ***
> The assessee has vide letter dated 18.02.2014 filed revised computation of income offering Rs.12,23,642/- under the head 'Short Term Capital Gains' . The explanation submitted by the assessee is considered. It is noted that the assessee has made disclosure of income of Rs.12,23,642/- only after the assessee was asked to explain the same. The assessee did not pointed out voluntarily after receipt of statutory notice u/s 143(2) which was issued after one year of filing of return of income. Even after that when the case was under hearing, the assessee did not offer the income of Rs.12,23,642/- being redemption of HDFC Mutual Fund unless he was specifically asked to explain the same. It is , therefore evident from the conduct of the assessee that he was trying to evade the income to the extent of Rs.12,23,642/- . Considering these facts, income of Rs.12,23,642/- is assessed under the head income from capital gain. In view of the above facts, I am satisfied that the assessee has concealed his income by furnishing inaccurate particulars of income to the extent of Rs.12,23,642/- and thus penalty proceedings u/s 271(1)(c) if the I T Act, 1961 is initiated separately on this point."

Merely because AO has mentioned alternate charges at the stage of issue of notice u/s 274 r.w.s. 271(1)(c) of the Act which is a preliminary stage of initiating penalty proceedings, the proceedings cannot be held to be vitiated, as in the instant case, the AO has clearly recorded detailed satisfaction after application of mind in the assessment order dated 20-02-2014 as in the instant appeal the assessee was confronted and cornered by the Revenue to have not disclosed the income earned by way of Director Sitting Fee of Rs. 4,00,000/- and short term capital gains on redemption of HDFC Mutual Funds to the tune of Rs. 12,23,642/- in the return of income filed by the assessee with the Revenue, to which the assessee admitted and immediately after being confronted by Revenue filed revised computation of income and paid due taxes to the Revenue. By no stretch of imagination it can be held that the assessee was not aware of the charge as framed by the AO in the assessment order dated 20-02-2014 framed u/s 143(3) of the Act with which he was burdened for initiating penalty proceedings u/s 271(1)(c) of the Act. We have also observed that in the order dated 26-08-2014 passed by the AO u/s 271(1)(c) of the Act levying penalty on the assessee , the AO after considering the explanation of the assessee has clearly recorded the charge

on which penalty had been levied on the assessee u/s 271(1)(c) of the Act, by holding as under :

> " 5. The assessee's submission has been considered , but the same is not found acceptable. The assessee has not furnished any concrete evidence either during assessment proceedings or penalty proceedings, which establish that there was reasonable cause for not furnishing the above income in his return of income. Merely because the assessee is not maintaining books of accounts, he cannot get rid of offering the income earned by him during the year. Further, the incomes involved are also not meager that due to oversight , left to be offered. Had the above incomes left by oversight , the assessee would have offered the same any time after filing of return by filing revised return . The assessee's act clearly shows his intention of evading tax by not disclosing his above incomes either in return of income or by filing revised return later on. Even during assessment proceedings, the assessee has not voluntarily offered the same for taxation. It was only when queried by the AO that the assessee offered the incomes and filed revised computation of income. From the above facts and by the conduct of the assessee, mens-rea of the assessee is very well established . In view of the facts of the case and elaborate discussion in assessment order, it is held that the assessee has concealed income by furnishing inaccurate particulars of income. Thus, the assessee has committed default u/s. 271(1)(c) of the I.T.Act and the case of the assessee is a fit case for levy of penalty."

Under these circumstances and as per detailed reasoning as set out above by us , we do not find any infirmity in the order of the A.O. as was confirmed by learned CIT(A), we confirm/uphold the appellate order of learned CIT(A) by confirming/sustaining the penalty of Rs. 3,13,000/- u/s 271(1)(c) of the Act.

9. In the result, appeal filed by the assessee in ITA No. 2976/Mum/2016 for assessment year 2011-12 is dismissed.

Order pronounced in the open court on 27th January, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांकः 27-02-2017 को की गई ।

Sd/-	sd/-
(SAKTIJIT DEY)	(RAMIT KOCHAR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated **27-02-2017**

I

व.नि.स./ R.K., Ex. Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "I" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**