आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 241/JP/2016
निर्धारण वर्ष/Assessment Year : 2005-06

Smt. Meena Bajaj 211, Pink City Tower, Jhotwara Road, Bani Park, Jaipur.	बनाम Vs.	The ITO, Ward-3(2) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGQPB 9442 F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Rajeev Sagoni (C.A.)
राजस्व की ओर से/ Revenue by : Shri R.A. Verma (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 16/01/2018
उदघोषणा की तारीख/Date of Pronouncement: 15/03/2018

आदेश/ ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 08.12.2015 of CIT(A), Jaipur arising from the penalty order u/s 271(1)(c) of the Act for the assessment year 2005-06. The assessee has raised the following ground:-

" 1. In the facts and circumstances of the case and in law the ld. CIT(A) has erred in confirming the action of ld. AO who has imposed the penalty of Rs. 4,48,335/- under section 271(1)(c) of

the Income Tax Act, 1961 contrary to the law and without following the directions of Hon'ble ITAT. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the penalty amounting to Rs. 4,48,335/- imposed under section 271(1)(c).
2. The assessee craves her right to add, amend or alter any of the grounds on or before the hearing."

2. The assessee has raised two additional grounds as under:-

"1. Penalty order dated 06.03.2013 passed in pursuance of Hon'ble ITAT order in MA dated 09.01.2012 is barred by limitation u/s 275 of the Income Tax Act, 1961. Therefore the order deserves to be quashed in toto.
2. In the facts and circumstances of the case and in law the ld. AO has erred in imposing penalty u/s 271(1)(c) without specifically pointing out in the show cause notice, whether the penalty was proposed on concealment of particulars of income or for furnishing inaccurate particulars of income. The action of the ld. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the penalty amounting to Rs. 4,48,335/- imposed u/s 271(1)(c)."

3. The additional ground no. 1 is regarding validity of order passed by the Assessing Officer in pursuant to the direction of this Tribunal being barred by limitation. This is second round of appeal, in the first round, the ld. CIT(A) deleted the penalty and on further appeal by the Revenue, this Tribunal vide order dated 09.01.2012 in MA No. 23/JP/2011 remanded the matter to the record of the AO for

consideration of matter fresh after allowing the opportunity to the assessee.

4. On the admission of additional ground no. 1 the ld. AR of the assessee has submitted that the above ground is a legal ground and all relevant facts are available on record as they are emerging from the order passed by the AO himself u/s 271(1)(c) of the Income Tax Act. He has thus contended that no new facts are required to be examined or any further enquiry is needed. Only the provisions of law are to be applied on the facts already available on record. The Omission of this ground in the memo of appeal is due to inadvertent mistake. The ld. AR has relied upon the order of the Hon'ble Supreme Court in case of National Thermal Power Co. Ltd. vs. CIT 229 ITR 383.

5. On the other hand, ld. DR has objected to the additional ground raised by the assessee and submitted that the assessee did not raise this issue before the authorities below. Therefore, the assessee cannot be permitted to raise a fresh ground without explaining satisfactorily the reasons for not raising before the authorities below.

6. We have considered the rival submissions as well as relevant material on record. The additional ground is regarding validity the order passed by the AO dated 06.03.2013 in pursuant to the order of this

Tribunal dated 09.01.2012 being barred by limitation u/s 275 of the I.T. Act. We find that the issue raised by the assessee in the additional ground is purely legal in nature and does not require consideration of any new facts or any inquiry for adjudication of the same. All the facts needed for adjudication are on record and therefore, in view of the decision of Hon'ble Supreme Court in case of National Thermal Power Corporation vs. CIT (supra) we admit the additional ground no. 1 for adjudication on merits.

7. On merits of the additional ground 1 the ld. AR of the assessee has submitted that as per the provisions of Section 275 of the Act the Assessing Officer was required to pass the order within a period of 6 month from the date of receipt of the order of this Tribunal dated 09.01.2012 however, the Assessing Officer has passed the order only on 06.03.2013 which is barred by limitation. Thus, the ld. AR has submitted that the impugned order passed by the AO in pursuant to the directions of this Tribunal is not sustainable being barred by limitation.

8. On the other hand, ld. DR has submitted that the provisions of Section 275 are not applicable for the purpose of limitation for passing the order by the AO in pursuant to the directions of this Tribunal. He has further contended that the provisions of section 275 are applicable

on the cases where the penalty is to be imposed for the first time whereas in the case in hand, the penalty u/s 271(1)(c) of the Act was imposed on 30.05.2008 which was well within the period of limitation as provided u/s 275 of the Act. The order passed by the AO dated 06.03.2013 is in the second round of penalty proceedings as per the remand order of this Tribunal and therefore, the provisions of Section 153 of the Act if at all are attracted in the second round of proceedings before the AO for the purpose of limitation.

9. We have considered the rival submissions as well as relevant material on record. The Tribunal remand matter to the record of the AO vide order dated 09.01.2012 in MA no. 23/JP/2011 as held in para 5.1 as under:-

> *"5.1 The ld. Counsel of the assessee has also filed an affidavit that in fact he could not understand the factum that he was allowed opportunity to file any details. Therefore, under misconception it was stated that he is ready to argue the case. Taking into consideration all these facts, we modify our order in the following manner:-*
> *"After considering the orders of the AO and ld. CIT(A) and the submissions of the assessee and also of the ld. D/R, we hold that ld. CIT(A) was not justified in cancelling the levy of penalty on the ground that no proper opportunity was given. In our view, the ld. CIT(A) should have remanded the matter back to the file of AO for allowing opportunity to the assessee instead of cancelling the levy of penalty. Accordingly, we set aside the order of ld. CIT(A) and remand the matter back to the file of AO to*

consider the levy of penalty afresh after affording reasonable opportunity of being heard to the assesse, as the penalty proceedings are separate and distinct from the assessment proceedings. The AO has imposed penalty merely placing reliance on the assessment order whereas he should have allowed proper opportunity to explain whether penalty is leviable or not, since penalty proceeding are separate and distinct and assessee can file any evidence which could not have been filed during the assessment proceeding. In view of these facts and circumstances we direct the AO to consider the levy of penalty afresh.
In the result, appeal of the department is treated as allowed for statistical purposes."

The AO passed the fresh order u/s 271(1)(c) r.w.s. 254 of the Act on 06.03.2013. The assessee has now raised the issue of limitation and contended that the impugned order is barred by limitation as provided u/s 275(1)(a) of the Act. For ready reference we reproduce U/s 275(1)(a) as under:-

275. *[37][(1)] No order imposing a penalty under this Chapter shall be passed—*

[38][(a) in a case where the relevant assessment or other order is the subject-matter of an appeal to the [39][***] Commissioner (Appeals) under section 246[40][or section 246A] or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed[41], or six months from the end of the month in which the order of the [42][***] Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the [43][Principal Chief Commissioner or] Chief Commissioner or [43][Principal

Commissioner or] Commissioner, whichever period expires later :

*[44][**Provided** that in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A, and the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within one year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the [43][Principal Chief Commissioner or] Chief Commissioner or [43][Principal Commissioner or] Commissioner, whichever is later;]"*

From the plain reading of section 275(1)(a) it reveals that the limitation provided under this section reckons either from the date of completion of assessment proceedings or from the order of the appellate authority received by the Chief Commissioner. Therefore, section 275(1)(a) stipulates the limitation for levy of penalty initiated in pursuant to the assessment proceedings or subsequent appeal order by ld. CIT(A) or by this Tribunal. Thus, the limitation provided u/s 275(1)(a) is for levy of penalty originally and not in set aside the proceedings of levy of penalty u/s 271(1)(a) by the appellate authority. The reference of order of appellate authority in this section is made with respect to the assessment/quantum proceedings and not penalty proceedings.

Therefore, reliance placed by the ld. AR on the provisions of section 275(1)(a) is misconceived. Hence, we do not find any merit or substance in the additional ground no. 1 of the assessee.

10. Now additional ground no. 2 is regarding validity of notice issued u/s 274 of the Income Tax Act. The ld. AR of the assessee has submitted that this ground is a legal ground and all relevant facts are available on record as they are emerging out of the notice issued by the AO u/s 274 r.w.s. 271(1)(c) of the Income Tax Act. He has further submitted that no new facts are required to be evaluated or any further enquiry is needed for adjudication of the additional ground. Thus he has pleaded that the additional ground raised by the assessee may be admitted for adjudication on merits. In support of his contention, he has relied upon the Hon'ble Supreme Court in case of National Thermal Power Co. Ltd. vs. CIT 229 ITR 383.

11. On the other hand, ld. DR has vehemently opposed to the additional ground raised by the assessee and submitted that this is the second round of appeal and when this issue was not involved in the first round of litigation and the Tribunal has set aside are remanded the matter to the record of the AO only for consideration of explanation of

the assessee is against levy of penalty then, the assessee cannot be allowed to raise this ground at this stage.

12. We have considered the rival submissions as well as relevant material on record. There is no dispute that in the appeal against the original order of levy of penalty u/s 271(1)(c) the assessee did not raise this issue either before the ld. CIT(A) or before this Tribunal. This Tribunal though initially reversed the order of the ld. CIT(A) and confirmed the penalty levied u/s 271(1)(c) vide order dated 10.03.2011 in ITA No. 298/JP/2010 as held in paras 7 to 12.1 as under:-

> *"7. We have heard rival submissions and considered them carefully. After considering the submissions and perusing the material on record, we find that department deserves to succeed in its appeal. It is seen that during assessment proceedings, the AO made a specific query in respect to cash credit to the tune of Rs. 12.25 lacs in personal capital account of the assessee as well as in account of Shri Manoj Nopani. The AO has made an observation in the assessment order that A/R of the assessee to explain the cash deposit in the name of Shri Manoj Nopani. On perusal of cash book ledger folio mentioned in the assessment order, it is noticed that the days when cash is shown in receipt from Manoj Nopani, the assessee was in need of cash. If the cash is not shown in receipt in these days, the cash balance came negative. In view of this fact, the AO observed that the assessee has shown unaccounted cash in the name of Manoj Nopani. As per order of AO, the ld. A/R of the assessee failed to explain the cash deposits in the name of Shri Manoj Nopani of Rs. 8,20,000/-. The cash book and ledger produced for examination were impounded after recording reasons. Thereafter, assessee was*

asked to explain the cash deposit in the name of Monoj Nopani and in the name of assessee totaling to Rs. 12,25,000/-. The ld. Counsel of the assessee along with the husband of the assessee attended the assessment proceedings on 31.10.2007 and by which it was submitted that the assessee has entered into Sale Agreement of plot no. F-975, Road No. 14, VKI Area, Jaipur with Smt. Santra Devi Agarwal for Rs. 40,00,000/- and Rs. 12,21,000/- has been shown received as advance. Copy of agreement was also filed on 17.10.2007. The assessee was required to produce Smt. Santra Devi. However, by letter dated 2.11.2007 it was submitted that since they are not able to produce Smt. Santra Devi, therefore, they are offering this amount for taxation and the tax has already been paid on this account. In view of these facts, the addition of Rs. 12,25,000/- was made by the AO in the assessment order and penalty proceedings under section 271(1)(c) were initiated.

8. A show cause notice was issued. As per order of AO, no explanation was offered. Therefore, the AO drew an inference that assessee has no explanation. He further observed that when the assessee was cornered in respect to cash credit in capital account of the assessee and in the name of husband of the assessee, then only the amount was surrendered. Therefore, in view of the AO, the assessee has concealed particulars of income. Accordingly, he levied penalty of Rs. 4,48,335/- under section 271(1)(c). Various decisions were also taken into consideration by the AO while imposing penalty on the assessee. The ld. CIT (A) cancelled the levy of penalty by observing that no proper opportunity was given to the assessee before levy of impugned penalty. It was further noted that no enquiry appears to have been made by the AO to show that the surrendered amount represented the concealed income of the assessee. Merely because the assessee had surrendered the amount in question, could not be basis for levy of penalty when such surrender was

voluntary and on the condition that no penalty would be levied. Accordingly levy of penalty was cancelled.

9. After considering the orders of the AO and ld. CIT (A) and written submissions filed on behalf of the assessee which is placed on record, we find that the AO was correct in levying the penalty on the facts of present case. The contention raised before ld. CIT (A) almost are the same contentions raised here before us through written submissions. In this submission it has been stated that because assessee was not able to produce Smt. Santra Devi, therefore, for this reason the penalty was levied. Reliance has been placed on various case laws. In our considered view, this is not merely a voluntary disclosure of the amount as assessee was required to explain the cash deposits in the capital account of the assessee as well as cash transferred from the capital account of husband of the assessee in the books of account of the assessee. However, no explanation was filed at first stage. Thereafter another opportunity was given to the assessee. Then the assessee offered an explanation that assessee has entered into an agreement of sale of plot with her mother for a consideration of Rs. 40,00,000/- and Rs. 12,21,000/- has been received in advance. Neither the date of advance is disclosed nor the reason has been given that once the advance was received in one go, then why the assessee has credited the amount on various different dates amounting to rs. 20,000/-, Rs. 20,000/-, 50,000/- or so. On 20 occasions in the case of Manoj Nopani the cash has been introduced at Rs. 8,20,000/-. Similarly, in case of assessee the cash has been introduced on 9 different dates amounting to Rs. 4,05,000/-. No reason has been assigned that why the cash has been introduced on so many dates when the advance was received in one go. It is further seen that on a later stage even the agreement of sale of plot was cancelled. It is also not known how the amount of Rs. 12,21,000/- received from the mother of the assessee on account of sale agreement has been returned. Neither any reason has been given why the

sale agreement is cancelled. It is surprising to note that the agreement of sale was entered with the mother of the assessee and mother was not willing to appear to confirm the sale agreement. From all these events/facts it emerges that assessee tried to explain the source of cash deposits under the garb of sale agreement. The assessee was required to produce Smt. Santra Devi Agarwal who happened to be the mother of the assessee. However, at this point of time the assessee came forward that they are surrendering this amount and tax has already been paid. In our considered view, this surrender is not a voluntary surrender. When the assessee was cornered in respect to cash deposit in the books of assessee, then only she came forward to surrender the amount. Explanation filed on behalf of the assessee does not prove the bona fide of the assessee. Supposing at the time of assessment proceedings the assessee was not able to produce Smt. Santra Devi, but they could have filed further confirmation and details during the appellate proceedings as the penalty proceedings are distinct and separate from the assessment proceedings. The assessee is free to lead any evidenced in her support. However, nothing has been brought on record. On a specific query by the Bench, the ld. Counsel of the assessee was not able to bring any further supporting evidence except the copy of agreement of sale of land and the surrender made during the assessment proceedings. Therefore, in our considered view the assessee miserably failed to explain the source of cash deposit in her capital account as well as in husband's account which was later on transferred to assessee's account. Accordingly, we hold that this surrender cannot be treated as voluntary surrender or to avoid litigation as the same was surrendered when the assessee was cornered. Therefore, we find that the cases on which reliance was placed does not help the case of the assessee.

10. Reliance has been placed in case of Gargi Din Jwala Prasad vs. CIT, 96 ITR 97 (All.) wherein principles of natural justice are

discussed. How the ratio of this decision is applicable in the facts of the present case was not explained. Facts are entire different.

11. Reliance was placed in the case of Tin Box Co. vs. CIT, 116 Taxman 491 (SC) in which it is held that where opportunity of hearing was not properly given, then the Tribunal was not justified in setting aside the assessment and remanding the matter to the AO for a fresh consideration again, we do not find how this ratio is applicable in the facts of the present case. Supposing no opportunity was given by the AO, then opportunity was given by ld. CIT (A) and nothing concrete evidence was filed before ld. CIT (A), even here before the Tribunal. The ld. Counsel has also not sought adjournment to file any other details as he also stated that there is no evidence except the agreement entered between assessee and Smt. Santra Devi Agarwal and voluntary surrender of the same amount.

12. Reliance was placed in the case of Dwijendra Kumar Bhattacharjee vs. Superintendent of Taxes, 78 STC 393 (Gau.). In this case also the issue was of opportunity and it was submitted that the opportunity must be real and effective. As stated above, nothing has been stated in respect to opportunity here before the Tribunal. Ld. CIT (A) though mentioned in his order that no opportunity was given by the AO but he has considered the submissions and cancelled the penalty. If, in the mind of ld. CIT (A) no opportunity was given by the AO, then the matter should have been remanded back to the file of AO but he has decided the issue on his own. Here, before the Tribunal nothing has been stated by ld. A/R that the opportunity was not given by the AO. If the opportunity was not given by the AO, then opportunity was given by ld. CIT (A) where no fresh evidence was filed except those evidence which were already filed before the AO. As stated above, even no material was brought on record here before the Tribunal which can be said that this needs to be verified. Therefore, in our considered view, the above case law is also not applicable.

12.1. Reliance has also been placed on various cases mentioned in the written submission and we have gone through those case laws and found that they are not applicable on the facts of the present case. Almost in all cases it has been held that if the assessment is made on agreed amount, then penalty is not leviable. However, in our considered view, as stated above, the assessment was not completed in this case on agreed basis as the assessee surrendered the amount of cash credit when the assessee was cornered. Therefore, the decision in the case of K.P. Madhusudanan vs. CIT, 251 ITR 99 (SC) on which reliance has been placed by AO is squarely applicable in the facts of the present case. In view of these facts and circumstances we reverse the order of ld. CIT (A) and restore the order of AO who levied the penalty."

However, in MA No. 23/JP/2011 filed by the assessee, this Tribunal vide order dated 09.01.2012 remanded the matter to the record of the AO for fresh consideration and the assessee was to be given an opportunity of hearing and also to produce evidence if any in support of the explanation as to why the penalty should not be levied u/s 271(1)(c)of the Act. The scope of remand was to give an opportunity to the assessee to produce the evidence and particularly the witness from whom the amount was claimed to have received by the husband of the assessee. The assessee never raised the issue of validity of notice u/s 274 of the Act on the ground that no specific default or nature of default on the part of the assessee was pointed out by the AO. Therefore, the issue which did not emanate either from the ld. CIT(A) in the first round

of appeal or from the order of the Tribunal dated 10.03.2011, the same cannot be agitated in MA in which the matter was remanded to the record of the AO. It is pertinent to note that the scope of MA u/s 254(2) is very limited and circumscribed and the parties to the appeal cannot be allowed to raise any issue in the proceedings u/s 254(2) to set up a new case not arising from the proceedings completed till then. Therefore when this issue was neither arisen from the order passed by the AO or ld. CIT(A) originally nor from the order passed by the Tribunal then the said issue cannot be raised in the appeal filed against the order passed in the remand proceedings. The subject matter and scope of remand proceeding is limited to the issue remand by the Tribunal and therefore, no new issue can be a subject matter of remand proceedings. Hence, the issue which was not a subject matter of first round of appeal cannot be allowed to raise in the subsequent proceedings arising from set aside order of this Tribunal and that too at this stage. Hence, we decline to admit the additional ground no. 2 raised by the assessee, the same is dismissed in limine.

13. The issue raised in the original ground is regarding the levy of penalty u/s 271(1)(c) against the addition/income surrendered by the assessee. The ld. AR of the assessee has submitted that during the

assessment proceedings the assessee surrendered amount of Rs. 12,25,000/- after duly explaining the same as undisclosed income and deposited the tax thereon. This action was taken by the assessee just to buy peace of mind as the assessee at that point of time, was unable to produce Smt. Santra Devi mother-in-law of the assessee from whom the said sum was received and thereafter used in the business. He has further submitted that the Assessing Officer was having statutory power for conducting enquiries and enforcing attendance of witness. But the AO did not exercise such powers by issuing notices u/s 131 even in the penalty proceedings. The ld. AR has further submitted that the assessee has provided name, address, agreement entered into and affidavit of Smt. Santra Devi establishing that the she had advanced money to the assessee. Hence, it is clear that the assessee has discharged her onus to prove the identity of the persons and genuineness of the transaction. The assessee could not be excepted to do any further. He has referred to the explanation1 to section 271(1)(c) of the Act and submitted that even if the explanation offered by the assessee was not found satisfactory but if the same is bonafide then no penalty ought to have been levied u/s 271(1)(c) of the Income Tax Act. Even otherwise the surrendered on behalf of the assessee was to buy peace of mind and

therefore, the penalty cannot be levied u/s 271(1)(c) of the Act. He has relied upon the decision of Hon'ble Supreme Court in case of Shri Shadi Lal Sugar & General Mills Ltd. vs. CIT 168 ITR 705.

14. On the other hand, ld. DR has submitted that this is not a voluntary surrender by the assessee but it was offered to tax only when the AO issued a show cause notice to the assessee. Further, the AO asked the assessee to produce creditor in support of the claim, the assessee came out with surrender of income and therefore, the income was disclosed by the assessee when it was detected by the AO. He has relied upon the orders of the authorities below.

15. We have considered the rival submissions as well as relevant material on record we find it is not voluntary discloser and surrender of income by the assessee but it was in response to the show cause notice given by the AO as to why the cash credit is not treated as unexplained income of the assessee. Thus, instead of allowing the AO to examine and carry out a proper investigation, the assessee offered the said amount of Rs. 12,25,000/- as undisclosed income. There is no dispute that the penalty proceeding are separate and independent from assessment proceedings however, the scope of enquiry in the penalty proceedings is limited only on the point to see whether the explanation

of the assessee though may not be found be accepted but it is a bonafide one. In the case of the assessee the explanation of the assessee was that the husband of the assessee received this cash of Rs. 12,25,000/- from his mother against the agreement to sale of land. The said agreement was subsequently cancelled and therefore, the explanation of the assessee was far from any real transaction and cannot be considered as bonafide one. The Tribunal has remand the matter to the record of the Assessing Officer to give an opportunity to the assessee to produce the evidence and the creditor however, the assessee again failed to produce the creditor before the AO though due to the reason that the mother of the husband of the assessee by the time expired. Therefore, the remand proceedings were meant to grant an opportunity to the assessee to furnish the explanation but the assessee failed to do and hence the onus cannot be shifted from assessee to AO when the assessee herself has failed to discharge the initial burden of furnishing the explanation.

16. As regards the surrendered being voluntarily in nature the Hon'ble Supreme Court in case of Mak Data Pvt. Ltd. vs. CIT 358 ITR 593 as held in paras 6 to 11 as under:-

> *"**6.** We have heard counsel on either side. We fully concur with the view of the High Court that the Tribunal has not properly*

understood or appreciated the scope of Explanation 1 to Section 271(1)(c) of the Act, which reads as follows :-

"Explanation 1 - Where in respect of any facts material to the computation of the total income of any person under this Act, -

(A) Such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Commissioner to be false, or

(B) Such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, 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."

***7.** The AO, in our view, shall not be carried away by the plea of the assessee like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc. to explain away its conduct. The question is whether the assessee has offered any explanation for concealment of particulars of income or furnishing inaccurate particulars of income. Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise.*

***8.** Assessee has only stated that he had surrendered the additional sum of Rs.40,74,000/- with a view to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the*

income tax department. Statute does not recognize those types of defences under the explanation 1 to Section 271(l)(c) of the Act. It is trite law that the voluntary disclosure does not release the Appellant-assessee from the mischief of penal proceedings. The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty.

9. *We are of the view that the surrender of income in this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. AO during the course of assessment proceedings has noticed that certain documents comprising of share application forms, bank statements, memorandum of association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed, have been impounded in the course of survey proceedings under Section 133A conducted on 16.12.2003, in the case of a sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The AO, in our view, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961.*

> ***10.*** *The AO has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing. The scope of Section 271(l)(c) has also been elaborately discussed by this Court in Union of India v. Dharmendra Textile Processors [2008] 13 SCC 369 and CIT v. Atul Mohan Bindal [2009] 9 SCC 589.*
>
> ***11.*** *The principle laid down by this Court, in our view, has been correctly followed by the Revenue and we find no illegality in the department initiating penalty proceedings in the instant case. We, therefore, fully agree with the view of the High Court. Hence, the appeal lacks merit and is dismissed. There shall be no order as to costs."*

The principle laid down by the Hon'ble Supreme Court in case of Mak Data Pvt. Ltd. vs. CIT (supra) is clearly applicable in the facts of the case of the assessee and accordingly by following the decision of Hon'ble supreme Court, we do not find error or illegality in the order of the authorities below levy the penalty u/s 271(1)(c) of the Act.

In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 15/03/2018.

Sd/-	Sd/-
(भागचंद)	(विजय पाल राव)
(Bhagchand)	(Vijay Pal Rao)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 15/03/2018.
*Santosh.
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Smt. Meena Bajaj, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-3(2),Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 241/JP/2016}

आदेशानुसार / By order,