

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'C': NEW DELHI)**

**BEFORE SMT. BEENA A. PILLAI, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**SA No.: 380/Del/2019
Arising Out of ITA No.: 765/Del/2019
(Assessment Year: 2001-02)**

GE Packaged Power Inc. 6 th Floor, Building No. 7A, Standard Chartered Building, DLF Cyber City, Phase- III, Gurgaon, Haryana, Pin: 122002	Vs.	DCIT (International Taxation) Circle- 1(3)(1), New Delhi
PAN No: AACCG3209J		
APPELLANT		RESPONDENT

**ITA No.: 765/Del/2019
(Assessment Year: 2001-02)**

GE Packaged Power Inc. 6 th Floor, Building No. 7A, Standard Chartered Building, DLF Cyber City, Phase- III, Gurgaon, Haryana, Pin: 122002	Vs.	DCIT (International Taxation) Circle- 1(3)(1), New Delhi
PAN No: AACCG3209J		
APPELLANT		RESPONDENT

**SA No.: 379/Del/2019
Arising Out of ITA No.: 693/Del/2019
(Assessment Year: 2001-02)**

General Electric Power Systems Inc. 6 th Floor, Building No. 7A, Standard Chartered Building, DLF Cyber City, Phase- III, Gurgaon,	Vs.	DCIT (International Taxation) Circle- 1(3)(1), New Delhi
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Haryana, Pin: 122002		
PAN No: AACCG4015E		
APPELLANT		RESPONDENT

ITA No.: 693/Del/2019
(Assessment Year: 2001-02)

General Electric Power Systems Inc. 6 th Floor, Building No. 7A, Standard Chartered Building, DLF Cyber City, Phase- III, Gurgaon, Haryana, Pin: 122002	Vs.	DCIT (International Taxation) Circle- 1(3)(1), New Delhi
PAN No: AACCG4015E		
APPELLANT		RESPONDENT

SA No.: 398/Del/2019
Arising Out of ITA No.: 757/Del/2019
(Assessment Year: 2008-09)

GE Jenbacher GMBH & Co. OHG 6 th Floor, Building No. 7A, Standard Chartered Building, DLF Cyber City, Phase- III, Gurgaon, Haryana, Pin: 122002	Vs.	DCIT (International Taxation) Circle- 1(3)(1), New Delhi
PAN No: AADCG2178B		
APPELLANT		RESPONDENT

ITA No.: 757/Del/2019
(Assessment Year: 2008-09)

GE Jenbacher GMBH & Co. OHG 6 th Floor, Building No. 7A, Standard Chartered Building, DLF Cyber City, Phase- III, Gurgaon, Haryana, Pin: 122002	Vs.	DCIT (International Taxation) Circle- 1(3)(1), New Delhi
PAN No: AADCG2178B		
APPELLANT		RESPONDENT

SA No.: 397/Del/2019

**Arising Out of ITA No.: 756/Del/2019
(Assessment Year: 2007-08)**

GE Jenbacher GMBH & Co. 6 th Floor, Building No. 7A, Standard Chartered Building, DLF Cyber City, Phase- III, Gurgaon, Haryana, Pin: 122002	Vs.	DCIT (International Taxation) Circle- 1(3)(1), New Delhi
PAN No: AADCG2178B		
APPELLANT		RESPONDENT

**ITA No.: 756/Del/2019
(Assessment Year: 2007-08)**

GE Jenbacher GMBH & Co. 6 th Floor, Building No. 7A, Standard Chartered Building, DLF Cyber City, Phase- III, Gurgaon, Haryana, Pin: 122002	Vs.	DCIT (International Taxation) Circle- 1(3)(1), New Delhi
PAN No: AADCG2178B		
APPELLANT		RESPONDENT

**SA No.: 384/Del/2019
Arising Out of ITA No.: 755/Del/2019
(Assessment Year: 2006-07)**

GE Jenbacher GMBH & Co. OHG 6 th Floor, Building No. 7A, Standard Chartered Building, DLF Cyber City, Phase- III, Gurgaon, Haryana, Pin: 122002	Vs.	ACIT (International Taxation) Circle- 1(3)(1), New Delhi
PAN No: AADCG2178B		
APPELLANT		RESPONDENT

**ITA No.: 755/Del/2019
(Assessment Year: 2006-07)**

GE Jenbacher GMBH & Co. OHG 6 th Floor, Building No. 7A, Standard Chartered	Vs.	ACIT (International Taxation) Circle- 1(3)(1),
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Building, DLF Cyber City, Phase- III, Gurgaon, Haryana, Pin: 122002		New Delhi
PAN No: AADCG2178B		
APPELLANT		RESPONDENT

SA No.: 383/Del/2019
Arising Out of ITA No.: 754/Del/2019
(Assessment Year: 2005-06)

GE Jenbacher GMBH & Co. 6 th Floor, Building No. 7A, Standard Chartered Building, DLF Cyber City, Phase- III, Gurgaon, Haryana, Pin: 122002	Vs.	ADIT (International Taxation) Circle- 1(3)(1), New Delhi
PAN No: AADCG2178B		
APPELLANT		RESPONDENT

ITA No.: 754/Del/2019
(Assessment Year: 2005-06)

GE Jenbacher GMBH & Co. 6 th Floor, Building No. 7A, Standard Chartered Building, DLF Cyber City, Phase- III, Gurgaon, Haryana, Pin: 122002	Vs.	ADIT (International Taxation) Circle- 1(3)(1), New Delhi
PAN No: AADCG2178B		
APPELLANT		RESPONDENT

SA No.: 382/Del/2019
Arising Out of ITA No.: 692/Del/2019
(Assessment Year: 2004-05)

GE Jenbacher GMBH & Co. 6 th Floor, Building No. 7A, Standard Chartered Building, DLF Cyber City, Phase- III, Gurgaon, Haryana, Pin: 122002	Vs.	DCIT (International Taxation) Circle- 1(3)(1), New Delhi
PAN No: AADCG2178B		

APPELLANT		RESPONDENT
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ITA No.: 692/Del/2019
(Assessment Year: 2004-05)

GE Jenbacher GMBH & Co. 6 th Floor, Building No. 7A, Standard Chartered Building, DLF Cyber City, Phase- III, Gurgaon, Haryana, Pin: 122002	Vs.	DCIT (International Taxation) Circle- 1(3)(1), New Delhi
PAN No: AADCG2178B		
APPELLANT		RESPONDENT

SA No.: 381/Del/2019
Arising Out of ITA No.: 758/Del/2019
(Assessment Year: 2004-05)

GE Packaged Power Inc. 6 th Floor, Building No. 7A, Standard Chartered Building, DLF Cyber City, Phase- III, Gurgaon, Haryana, Pin: 122002	Vs.	DCIT (International Taxation) Circle- 1(3)(1), New Delhi
PAN No: AACCG3209J		
APPELLANT		RESPONDENT

ITA No.: 758/Del/2019
(Assessment Year: 2004-05)

GE Packaged Power Inc. 6 th Floor, Building No. 7A, Standard Chartered Building, DLF Cyber City, Phase- III, Gurgaon, Haryana, Pin: 122002	Vs.	DCIT (International Taxation) Circle- 1(3)(1), New Delhi
PAN No: AACCG3209J		
APPELLANT		RESPONDENT

Assessee by : Shri Sachet Jolly, Adv.,
Shri Aarush Bhatia, Adv.
Revenue by : Shri Amit Katoch, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, AM

These are the appeals filed by the assessee against the orders each dated 22.11.2018 of Ld. Commissioner of Income Tax (Appeals)- 42, New Delhi [‘CIT (A)’ for short] in Appeal Nos. 765/Del/2019 (Assessment Year: 2001-02), 693/Del/2019 (Assessment Year: 2001-02), 757/Del/2019 (Assessment Year: 2008-09), 756/Del/2019 (Assessment Year: 2007-08), 755/Del/2019 (Assessment Year: 2006-07), 754/Del/2019 (Assessment Year: 2005-06), 692/Del/2019 (Assessment Year: 2004-05), 758/Del/2019 (Assessment Year: 2004-05).

1.1) Grounds of appeal in ITA No. 765/Del/2019 are as under:

1. *That on the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals) [“CIT(A)”] erred in confirming the action of the Assessing Officer (“AO”) in levying penalty of Rs. 76,34,170/- under Section 271(1)(c) of the Income Tax Act, 1961 (“the Act”)*
2. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not adjudicating Ground 2.1 in the Form No. 35 filed by the Appellant before the Ld. CIT(A) wherein the Appellant challenged the action of the Ld. AO in levying Penalty of INR 76,34,170/- @100% of the alleged tax on assessed income, without appreciating that penalty is to be levied only on the amount of income on which tax is sought to be evaded i.e. income from offshore supply and offshore repair work in the present case (income of INR 5,98,005*48% tax rate), is INR 2,87,042 and not on the returned income already offered to tax in return of income filed by the Appellant.*
3. *That on the facts and circumstances of the case and in law, the Ld. AO erred in passing the penalty order under Section 271(1)(c) of the Act which are wholly without jurisdiction and clearly barred by limitation inasmuch as the same have been passed beyond the period of limitation*

prescribed under Section 275(1)(a) of the Act.

4. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the initiation of penalty by way of issue of penalty notice under Section 274 of the Act without specifying whether the penalty is initiated for concealment of income or for furnishing of inaccurate particulars of income.*

5. *That on the facts and circumstances of the case and in law, the CIT(A) erred in alleging that the Appellant had concealed particulars of income, without appreciating that the Appellant made complete disclosure in the notes accompanying the return of income.*

6. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that on identical facts, penalty had been deleted by the predecessor of the CIT(A) in the case of GE Caledonian Ltd. and GE Aviation Service Operation LLP for the AY 2011-12.*

7. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that the Hon'ble High Court having admitted the appeal of the Appellant for the same AY on a substantial question of law qua existence of a permanent establishment, the issue was prima facie debatable, on which no penalty could have been levied,*

8. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that penalty under Section 271(1)(c) of the Act had been deleted in the case of Rolls Royce, which formed the bedrock and sole basis of the addition made by the AO, on which penalty has now been levied.*

9. *That on the facts and circumstances of the case and in law, the CIT(A) erred in confirming the levy of penalty under Section 271(1)(c) of the Act on the basis of profits attributed to the alleged PE of the Appellant, which was based on estimation, and, therefore, do not tantamount to concealment of income or furnishing of inaccurate particulars of income.*

Grounds of appeal in ITA No. 693/Del/2019 are as under:

1. *That on the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals) [**"CIT(A)"**] erred in confirming the action of the Assessing Officer (**"AO"**) in levying penalty of Rs. 34,29,630/- under Section 271(1)(c) of the Income Tax Act, 1961 (**"the Act"**)*

2. *That on the facts and circumstances of the case and in law, the Ld. AO erred in passing the penalty order under Section 271(1)(c) of the Act which are wholly without jurisdiction and clearly barred by limitation inasmuch as the same have been passed beyond the period of limitation prescribed under Section 275(1)(a) of the Act.*
3. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the initiation of penalty by way of issue of penalty notice under Section 274 of the Act without specifying whether the penalty is initiated for concealment of income or for furnishing of inaccurate particulars of income.*
4. *That on the facts and circumstances of the case and in law, the CIT(A) erred in alleging that the Appellant had concealed particulars of income, without appreciating that the Appellant made complete disclosure in the notes accompanying the return of income.*
5. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that on identical facts, penalty had been deleted by the predecessor of the CIT(A) in the case of GE Caledonian Ltd. and GE Aviation Service Operation LLP for the AY 2011-12.*
6. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that the Hon'ble High Court having admitted the appeal of the Appellant for the same AY on a substantial question of law qua existence of a permanent establishment, the issue was prima facie debatable, on which no penalty could have been levied,*
7. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that penalty under Section 271(1)(c) of the Act had been deleted in the case of Rolls Royce, which formed the bedrock and sole basis of the addition made by the AO, on which penalty has now been levied.*
8. *That on the facts and circumstances of the case and in law, the CIT(A) erred in confirming the levy of penalty under Section 271(1)(c) of the Act on the basis of profits attributed to the alleged PE of the Appellant, which was based on estimation, and, therefore, do not tantamount to concealment of income or furnishing of inaccurate particulars of income.*

Grounds of appeal in ITA No. 757/Del/2019 are as under:

1. *That on the facts and circumstances of the case and in law, the*

Commissioner of Income-tax (Appeals) [“CIT(A)”] erred in confirming the action of the Assessing Officer (“AO”) in levying penalty of Rs. 1,04,01,600/- under Section 271(1)(c) of the Income Tax Act, 1961 (“the Act”)

2. *That on the facts and circumstances of the case and in law, the Ld. AO erred in passing the penalty order under Section 271(1)(c) of the Act which are wholly without jurisdiction and clearly barred by limitation inasmuch as the same have been passed beyond the period of limitation prescribed under Section 275(1)(a) of the Act.*

3. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the initiation of penalty by way of issue of penalty notice under Section 274 of the Act without specifying whether the penalty is initiated for concealment of income or for furnishing of inaccurate particulars of income.*

4. *That on the facts and circumstances of the case and in law, the CIT(A) erred in alleging that the Appellant had concealed particulars of income, without appreciating that the Appellant made complete disclosure in the notes accompanying the return of income.*

5. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that on identical facts, penalty had been deleted by the predecessor of the CIT(A) in the case of GE Caledonian Ltd. and GE Aviation Service Operation LLP for the AY 2011-12.*

6. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that the Hon’ble High Court having admitted the appeal of the Appellant for the same AY on a substantial question of law qua existence of a permanent establishment, the issue was prima facie debatable, on which no penalty could have been levied,*

7. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that penalty under Section 271(1)(c) of the Act had been deleted in the case of Rolls Royce, which formed the bedrock and sole basis of the addition made by the AO, on which penalty has now been levied.*

8. *That on the facts and circumstances of the case and in law, the CIT(A) erred in confirming the levy of penalty under Section 271(1)(c) of the Act on the basis of profits attributed to the alleged PE of the Appellant, which was based on estimation, and, therefore, do not tantamount to concealment of income or furnishing of inaccurate*

particulars of income.

Grounds of appeal in ITA No. 756/Del/2019 are as under:

1. *That on the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals) ["CIT(A)"] erred in confirming the action of the Assessing Officer ("AO") in levying penalty of Rs. 43,44,788/- under Section 271(1)(c) of the Income Tax Act, 1961 ("the Act")*
2. *That on the facts and circumstances of the case and in law, the Ld. AO erred in passing the penalty order under Section 271(1)(c) of the Act which are wholly without jurisdiction and clearly barred by limitation inasmuch as the same have been passed beyond the period of limitation prescribed under Section 275(1)(a) of the Act.*
3. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the initiation of penalty by way of issue of penalty notice under Section 274 of the Act without specifying whether the penalty is initiated for concealment of income or for furnishing of inaccurate particulars of income.*
4. *That on the facts and circumstances of the case and in law, the C1T(A) erred in alleging that the Appellant had concealed particulars of income, without appreciating that the Appellant made complete disclosure in the notes accompanying the return of income.*
5. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that on identical facts, penalty had been deleted by the predecessor of the CIT(A) in the case of GE Caledonian Ltd. and GE Aviation Service Operation LLP for the AY 2011-12.*
6. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that the Hon'ble High Court having admitted the appeal of the Appellant for the same AY on a substantial question of law qua existence of a permanent establishment, the issue was prima facie debatable, on which no penalty could have been levied.*
7. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that penalty under Section 271(1)(c) of the Act had been deleted in the case of Rolls Royce, which formed the bedrock and sole basis of the addition made by the AO, on which penalty has now been levied.*
8. *That on the facts and circumstances of the case and in law, the*

CIT(A) erred in confirming the levy of penalty under Section 271(1)(c) of the Act on the basis of profits attributed to the alleged PE of the Appellant, which was based on estimation, and, therefore, do not tantamount to concealment of income or furnishing of inaccurate particulars of income.

Grounds of appeal in ITA No. 755/Del/2019 are as under:

1. *That on the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals) [“CIT(A)”] erred in confirming the action of the Assessing Officer (“AO”) in levying penalty of Rs. 32,86,080/- under Section 271(1)(c) of the Income Tax Act, 1961 (“the Act”)*
2. *That on the facts and circumstances of the case and in law, the Ld. AO erred in passing the penalty order under Section 271(1)(c) of the Act which are wholly without jurisdiction and clearly barred by limitation inasmuch as the same have been passed beyond the period of limitation prescribed under Section 275(1)(a) of the Act.*
3. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the initiation of penalty by way of issue of penalty notice under Section 274 of the Act without specifying whether the penalty is initiated for concealment of income or for furnishing of inaccurate particulars of income.*
4. *That on the facts and circumstances of the case and in law, the CIT(A) erred in alleging that the Appellant had concealed particulars of income, without appreciating that the Appellant made complete disclosure in the notes accompanying the return of income.*
5. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that on identical facts, penalty had been deleted by the predecessor of the' CIT(A) in the case of GE Caledonian Ltd. and GE Aviation Service Operation LLP for the AY 2011-12.*
6. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that the Hon'ble High Court having admitted the appeal of the Appellant for the same AY on a substantial question of law qua existence of a permanent establishment, the issue was prima facie debatable, on which no penalty could have been levied,*
7. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that penalty under Section 271(1)(c) of the Act had been deleted in the case of*

Rolls Royce, which formed the bedrock and sole basis of the addition made by the AO, on which penalty has now been levied.

8. *That on the facts and circumstances of the case and in law, the CIT(A) erred in confirming the levy of penalty under Section 271(1)(c) of the Act on the basis of profits attributed to the alleged PE of the Appellant, which was based on estimation, and, therefore, do not tantamount to concealment of income or furnishing of inaccurate particulars of income.*

Grounds of appeal in ITA No. 754/Del/2019 are as under:

1. *That on the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals) [“CIT(A)”] erred in confirming the action of the Assessing Officer (“AO”) in levying penalty of Rs. 31,34,100/- under Section 271(1)(c) of the Income Tax Act, 1961 (“the Act”)*

2. *That on the facts and circumstances of the case and in law, the Ld. AO erred in passing the penalty order under Section 271 (1)(c) of the Act which are wholly without jurisdiction and clearly barred by limitation inasmuch as the same have been passed beyond the period of limitation prescribed under Section 275(1)(a) of the Act.*

3. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the initiation of penalty by way of issue of penalty notice under Section 274 of the Act without specifying whether the penalty is initiated for concealment of income or for furnishing of inaccurate particulars of income.*

4. *That on the facts and circumstances of the case and in law, the CIT(A) erred in alleging that the Appellant had concealed particulars of income, without appreciating that the Appellant made complete disclosure in the notes accompanying the return of income.*

5. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that on identical facts, penalty had been deleted by the predecessor of the CIT(A) in the case of GE Caledonian Ltd. and GE Aviation Service Operation LLP for the AY 2011-12.*

6. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that the Hon’ble High Court having admitted the appeal of the Appellant for the same AY on a substantial question of law qua existence of a permanent establishment, the issue was prima facie debatable, on which no penalty could have been levied.*

7. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that penalty under Section 271(1)(c) of the Act had been deleted in the case of Rolls Royce, which formed the bedrock and sole basis of the addition made by the AO, on which penalty has now been levied.*

8. *That on the facts and circumstances of the case and in law, the CIT(A) erred in confirming the levy of penalty under Section 271(1)(c) of the Act on the basis of profits attributed to the alleged PE of the Appellant, which was based on estimation, and, therefore, do not tantamount to concealment of income or furnishing of inaccurate particulars of income.*

Grounds of appeal in ITA No. 692/Del/2019 are as under:

1. *That on the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals) [“CIT(A)”] erred in confirming the action of the Assessing Officer (“AO”) in levying penalty of Rs. 28,93,660/- under Section 271(1)(c) of the Income Tax Act, 1961 (“the Act”)*

2. *That on the facts and circumstances of the case and in law, the Ld. AO erred in passing the penalty order under Section 271(1)(c) of the Act which are wholly without jurisdiction and clearly barred by limitation inasmuch as the same have been passed beyond the period of limitation prescribed under Section 275(1)(a) of the Act.*

3. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not adjudicating Ground 2.1 in the Form No. 35 filed by the Appellant before the Ld. CIT(A) wherein the Appellant had challenged the action of the Ld. AO in levying penalty @300% (of INR 28,93,600) of the amount of tax sought to be evaded in computation of tax, while in the impugned order itself, the Ld. AO stated to levy penalty @ 100% (of INR 9,64,660) of the tax sought to be evaded.*

4. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the initiation of penalty by way of issue of penalty notice under Section 274 of the Act without specifying whether the penalty is initiated for concealment of income or for furnishing of inaccurate particulars of income.*

5. *That on the facts and circumstances of the case and in law, the CIT(A) erred in alleging that the Appellant had concealed particulars of income, without appreciating that the Appellant made complete disclosure in the notes accompanying the return of income.*

6. *That on the facts and circumstances of the case and in law, the*

CIT(A) erred in upholding the levy of penalty, without appreciating that on identical facts, penalty had been deleted by the predecessor of the CIT(A) in the case of GE Caledonian Ltd. and GE Aviation Service Operation LLP for the AY 2011-12.

7. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that the Hon'ble High Court having admitted the appeal of the Appellant for the same AY on a substantial question of law qua existence of a permanent establishment, the issue was prima facie debatable, on which no penalty could have been levied.*

8. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that penalty under Section 271(1)(c) of the Act had been deleted in the case of Rolls Royce, which formed the bedrock and sole basis of the addition made by the AO, on which penalty has now been levied.*

9. *That on the facts and circumstances of the case and in law, the CIT(A) erred in confirming the levy of penalty under Section 271(1)(c) of the Act on the basis of profits attributed to the alleged PE of the Appellant, which was based on estimation, and, therefore, do not tantamount to concealment of income or furnishing of inaccurate particulars of income.*

Grounds of appeal in ITA No. 758/Del/2019 are as under:

1. *That on the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals) ["CIT(A)"] erred in confirming the action of the Assessing Officer ("AO") in levying penalty of Rs. 22,10,340/- under Section 271(1)(c) of the Income Tax Act, 1961 ("the Act")*

2. *That on the facts and circumstances of the case and in law, the Ld. AO erred in passing the penalty order under Section 271(1)(c) of the Act which are wholly without jurisdiction and clearly barred by limitation inasmuch as the same have been passed beyond the period of limitation prescribed under Section 275(1)(a) of the Act.*

3. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the initiation of penalty by way of issue of penalty notice under Section 274 of the Act without specifying whether the penalty is initiated for concealment of income or for furnishing of inaccurate particulars of income.*

4. *That on the facts and circumstances of the case and in law, the CIT(A) erred in alleging that the Appellant had concealed particulars of*

income, without appreciating that the Appellant made complete disclosure in the notes accompanying the return of income.

5. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that on identical facts, penalty had been deleted by the predecessor of the CIT(A) in the case of GE Caledonian Ltd. and GE Aviation Service Operation LLP for the AY 2011-12.*

6. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that the Hon'ble High Court having admitted the appeal of the Appellant for the same AY on a substantial question of law qua existence of a permanent establishment, the issue was prima facie debatable, on which no penalty could have been levied,*

7. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the levy of penalty, without appreciating that penalty under Section 271(1)(c) of the Act had been deleted in the case of Rolls Royce, which formed the bedrock and sole basis of the addition made by the AO, on which penalty has now been levied.*

8. *That on the facts and circumstances of the case and in law, the CIT(A) erred in confirming the levy of penalty under Section 271(1)(c) of the Act on the basis of profits attributed to the alleged PE of the Appellant, which was based on estimation, and, therefore, do not tantamount to concealment of income or furnishing of inaccurate particulars of income.*

2) For the sake of convenience, all these eight appeals and eight stay applications are disposed off through this consolidated order. All the appeals are against levy of penalty under Section ('u/s' for short) 271(1)(c) of Income Tax Act ('IT Act' for short). In the grounds of appeal, and also in his oral submissions at the time of hearing before us, the Ld. Counsel for Assessee admitted that the penalty u/s 271(1)(c) of IT Act, which are the subject matter of these appeals, were levied by the Assessing Officer ('AO' for short) are in respect of those additions in the assessment order which have been confirmed by Income Tax Appellate Tribunal ('ITAT' for short). However, he submitted that the additions have been disputed by the respective assesseees in appeals

u/s 260A of IT Act. He further informed that all these appeals filed by the respective assessees in Hon'ble High Court, u/s 260A of IT Act are yet to be decided by the Hon'ble High Court. However, he submitted that the Hon'ble High Court has framed substantial questions of law in respect of the additions that were confirmed by ITAT. He contended that the quantum additions, though confirmed by ITAT, are on debatable and disputable issues on which difference of opinion can legitimately exist. Therefore, he submitted that the quantum additions being debatable and disputable, penalty u/s 271(1)(c) of IT Act was unjustified and should be deleted. In this regard he drew our attention to the decision of Hon'ble Delhi High Court, which is jurisdictional High Court, in the case of *CIT vs. Liquid Investment and Trading Company* vide order dated 05.10.2010 in ITA No. 240/2019 in which the Hon'ble High Court held as under:

“Both the CIT(A) as well as the ITAT have set aside the penalty imposed by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 on the ground that the issue of deduction under Section 14A of the Act was prescribed to the assessee, the assessee has preferred an appeal in this Court under Section 260A of the Act which has also been admitted and substantial question of law framed. This itself shows that the issue is debatable. For these reasons, we are of the opinion that no question of law arises in the present case. This appeal is accordingly dismissed.”

2.1) Ld. Counsel for assessee further drew our attention to the order of ITAT, Delhi Benches, Delhi in the case of *GE Energy Parts Inc. and others vs. DCIT* in which the aforesaid order of Hon'ble Delhi High Court in the case of *Liquid Investment and Trading Company* (supra) was considered and on identical facts, the penalty levied u/s 271(1)(c) of IT Act was deleted. Thus, he submitted that in the present appeals the issue regarding penalty u/s 271(1)(c) of IT Act is squarely covered in favour of the assessee by aforesaid orders of Hon'ble Delhi High Court and ITAT, Delhi Benches in

the cases of *Liquid Investment and Trading Company* (supra) and *GE Energy Parts Inc.* respectively. He further assailed the penalty u/s 271(1)(c) of IT Act by the AO on the ground that it was barred by limitation. In support of this, he filed information collected under Right to Information Act, regarding date of service of order of ITAT in quantum appeals; on Income Tax Department. Moreover, the Ld Counsel for the assessee also submitted that the penalty levied u/s 271(1)(c) of IT Act contending that the penalty levied u/s 271(1)(c) of IT Act deserves to be deleted also for the fact that in the notices u/s 271(1)(c) of IT Act the AO did not make a specific charge against the assessee as to whether there was concealment of particulars of income or there was furnishing of inaccurate particulars on income. To summarize, the Ld. Counsel for the assessee submitted that the penalty levied u/s 271(1)(c) of IT Act deserves to be deleted on the following grounds, any one of which is sufficient for deletion of the penalty u/s 271(1)(c) of IT Act:

- a) The quantum additions are on debatable issues on which difference of opinion can legitimately exist and on which substantial question of law has already been framed by Hon'ble High Court.
- b) Penalties levied by AO are barred by limitation.
- c) The AO did not make specific charge in the penalty notice whether there was concealment of particulars on income or there was furnishing of inaccurate particulars of income.

2.2) In reply, the Ld. Departmental Representative ('DR' for short) did not dispute the contentions of Ld. Counsel for assessee that quantum additions were on disputable and debatable issues on which different views could legitimately exist. He also did not dispute the fact that substantial questions of law have been framed by Hon'ble High Court in appeals u/s 260A of IT Act in respect of quantum additions confirmed by ITAT regarding all the additions in respect of which penalties (disputed in the present appeals before us) have been levied by AO u/s 271(1)(c) of IT Act. However, He relied on order of Hon'ble Mumbai High Court in the case of *PCIT vs. M/s Shree Gopal Housing and Plantation Corporation* in 2018-TIOL-2413-Hon'ble High Court-MUM-IT and contended that it cannot be a universal rule that once the appeal from the order of the Tribunal has been admitted in the quantum proceedings, then, ipso facto the issue is debatable issue warranting deletion of penalty by the Tribunal.

3) We have heard both sides attentively. We have perused materials on record carefully. We have considered the judicial precedents brought to our notice by the two sides. We are aware of an earlier decision of Coordinate Bench of ITAT, Delhi in the case of *ACIT vs. Moradabad Toll Road Co. Ltd. in [2016] 68 Taxmann.com 411 (Delhi Trib.) / [2015] 42 ITR (T) 280 (Delhi Trib.)* in which also the aforesaid case of *Liquid Investment and Trading Company* (supra) was considered and relying on the same it was held that no penalty u/s 271(1)(c) of IT Act could be imposed on debatable issue. To quote from this order it was held by ITAT, Delhi in the case of *ACIT vs. Moradabad Toll Road Co. Ltd.* (supra):

“6. ... where the assessee has preferred an appeal u/s 260A of IT Act which has also been admitted and substantial question of law framed, this difference shows that the issue is debatable. In our considered view no penalty u/s 271(1)(c) of IT Act could be imposed on a debatable issue.”

4) The reliance placed by the Ld. DR on *PCIT vs. M/s Shree Gopal Housing and Plantation Corporation* (supra) does not help the case of Revenue because even in that case also, the Hon’ble Bombay High Court has held:

“5. In fact, the admission of an appeal in quantum proceedings, if arising on a pure interpretation of law or on a claim for deduction in respect of which full disclosure has been made, may, give rise to a possible view, that admission of appeal in the quantum proceedings would suggest no penalty can be imposed as it is a debatable issue.”

4.1) It was in the context of a situation in which Tribunal’s order in quantum proceedings was perverse, that the Hon’ble High Court held:

“It cannot be a universal rule that once an appeal from the order of the Tribunal has been admitted in the quantum proceedings, then, ipso facto the issue is a debatable issue warranting deletion of penalty by the Tribunal.”

4.1.1) In the appeals before us, it is not the case of Revenue that the orders of Tribunal in quantum proceedings are perverse. Thus, the order of Hon’ble Bombay High Court was on clearly distinguishable facts and circumstances. In fact, in the facts and circumstances of the appeals before us; the ratio of Hon’ble Bombay High Court in *PCIT vs. M/s Shree Gopal Housing and Plantation Corporation* (supra), as narrated in foregoing paragraph (4) of this order, is against Revenue and in favour of assessee. Moreover, in another case of Hon’ble Bombay High Court reported at *CIT vs. Nayan Builders & Developers [2015] 56 taxmann.com 335 (Bombay)/[2015] 231 Taxmann 665 (Bombay)/[2014] 368 ITR 722 (Bombay)* it was held by Hon’ble High Court:

“As a proof that the penalty was debatable and arguable issue, the Tribunal referred to the order on the assessee’s appeal in quantum proceedings and the substantial questions of law which have been framed therein. We have also perused that order dated September 27, 2010, admitting Income Tax Appeal No. 2368 of 2009. In our view, there was no case made out for imposition of penalty and the same was rightly set aside.”

4.2) Facts are not in dispute. It is not disputed that substantial questions of law on the quantum additions confirmed by ITAT have already been framed by Hon’ble Delhi High Court regarding all the additions in respect of which penalties (disputed in the present appeals before us) have been levied by the AO, u/s 271(1)(c) of IT Act. It is also not in dispute that quantum additions were on disputable and debatable issues on which different views could legitimately exist. In these facts and circumstances, respectfully following the aforesaid precedents, vide order of Hon’ble Delhi High Court in *CIT vs. Liquid Investment and Trading Company* (supra), decision of Hon’ble Bombay High Court in *CIT vs. Nayan Builders & Developers* (supra), decision of ITAT, Delhi in *ACIT vs. Moradabad Toll Road Co. Ltd.* (supra); and after due consideration of *PCIT vs. M/s Shree Gopal Housing and Plantation Corporation* (supra); in our view the issue regarding penalty u/s 271(1)(c) of IT Act disputed in the appeals before us is covered in favour of the assessee by the aforesaid orders; and, therefore, we hold that the penalties levied u/s 271(1)(c) and disputed in the present appeals before us, are not sustainable. Accordingly, the penalties levied u/s 271(1)(c) of IT Act and disputed in the present appeals before us are hereby cancelled.

5) Since, we have already deleted the penalties levied u/s 271(1)(c) of IT Act, the other contention raised by the assessee, and as mentioned in the foregoing paragraph

(2.1) (b) that the penalties were barred by limitation, is academic in nature and need not be adjudicated. Further, the contention of the Ld. Counsel for the assessee as mentioned in foregoing paragraph (2.1) (c) of this order – that in the penalty notices there was no specific charge as to whether there was concealment of particulars of income or furnishing of inaccurate particulars of income; is also academic in nature and need not be adjudicated. Therefore, these issues and contentions raised before us in these appeals are not being adjudicated, being purely academic in nature.

5.1) Since, the penalties have been deleted by us, the stay applications become infructuous. Therefore, all the eight stay applications are hereby dismissed being infructuous.

In the result, all the eight appeals are allowed for statistical purposes and all the stay applications are dismissed being infructuous.

Order pronounced in the Open Court on 12.04.2019.

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Dated: 12.04.2019

Bidhan

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	11.04.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	