

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No. 869/Ind/2018

Assessment Year: 2014-15

Shri Ashok Bhatia 54, Joshi Market, Naliya Bakhal, Indore	Vs.	DCIT Central-1, Indore
(Appellant)		(Revenue)
PAN No.ACFPB4590H		

Appellant by	Shri Ashish Goyal & Shri N.D. Patwa, ARs
Revenue by	Shri Ashish Porwal, DR
Date of Hearing	07.01.2020
Date of Pronouncement	05.02.2020

ORDER

PER MANISH BORAD, AM.

The above captioned appeal filed at the instance of assessee pertaining to Assessment Year 2014-15 is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-III (in short 'Ld.CIT(A)'), Indore dated 14.08.2018 which is arising out of the order u/s 271AAB(1)(c) of the Income Tax Act 1961(In short the 'Act') dated 26.09.2016 framed by DCIT (Central)-1, Indore.

2. Assessee has raised following grounds of appeal;

1. The Ld. CIT (A) has erred in confirming the penalty u/s 271AAB of the Act of Rs.64,22,348/- levied by Assessing Officer which is not in accordance with the law and therefore penalty requires to be deleted.

1.2 that the Ld. CIT (A) has erred in not accepting the assessee's contention and various judicial pronouncements and confirming the penalty levied by Assessing Officer therefore penalty required to be deleted.

1.3 That, the Ld. CIT (A) has erred in invoking provision of sec.292B for confirming the penalty levied by Assessing Officer u/s 271AAB through not being initiated even by Assessing Officer which is against the spirit of law, therefore, penalty requires to be deleted.

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

3. Brief facts of the case as culled out from the records are that assessee derives income from business of retail trading of sarees, income from house properties and income from other sources as interest. A search and seizure operations u/s 132 of the Act were carried out on the business as well as residential premises of CHL Group of Indore including the assessee on 4.10.2013. The return for Assessment Year 2014-15 was filed on 22.12.2015 u/s 153A of the Act declaring income of Rs.2,24,66,650/-including surrendered

income of Rs.2,08,00,522/-. Assessment u/s 143(3) was completed on 22.3.16 adding Rs.6,07,306/- being 20% of the jewellery found and not seized valued at Rs.30,36,532/- and initiating penalty proceedings u/s 271AAB. Assessee preferred appeal for CIT(A) but could not succeed. Now the assessee is in appeal before the Tribunal challenging the penalty raising legal ground as well as ground on merits.

4. During the course of hearing Ld. Counsel for the assessee raised additional legal ground rely on the judgment of Hon'ble Apex Court in the case of National Thermal Power Company Limited 229 ITR 383(SC) challenging the validity of notice issued u/s 274 r.w.s. 271AAB of the Act claiming it to be illegal and bad in law. Ld. Counsel for the assessee further placed reliance on the written submissions and judicial pronouncements referred therein.

(i) Defective notice

Ld AO initiated penalty proceedings in a casual mechanical manner . The notice on **PB 57** shows that assessing officer has not made a specific charge. The notice so issued is illegal and therefore not sustainable in law:

Reliance is placed on judgment of **Shri Vivek Chugh ITA No.636/Ind/2017** dated 28.03.2019 (Indore Tribunal), **(CL 120-123)** in which it was held that:

“

.... notice

7. A bare reading of the above notice suggests that the notice has been issued in a casual fashion. The officer has not applied his mind and no specific charge is mentioned for which the assessee was required to be show caused. In absence of the requisite contents of specific charge the initiation of proceedings cannot be sustained being bad in law.”

Further, reliance is also placed on the judgment in **DCIT vs R. Elangovan (Trib. Chennai) (CL 113)**, where again it was held that since the penalty notice u/s. 271AAB was vague, penalty cannot be levied.

Further, ld CIT(A) has referred to the judgment of **Pr. CIT vs Sandeep Chandak 405 ITR 648 (All.)**. This judgment was discussed and distinguished in the case of **Ravi Mathur vs DCIT (TS-8004-ITAT-2018(Jaipur)-O) (CL-131-155)**.

5. Ld. Counsel for the assessee submitted that before levying the penalty u/s 271AAB of the Act Ld. A.O has to issue notice u/s 274 of the Act, as provided in Section 271AAB(3) of the Act. In the notice issued to the assessee there is no mention about the various conditions provided u/s 271 AAB of the Act relating to levy of penalty @ 10% or 20% or 30% (as the case may be). Nothing is specified in the notice about Clause-a, b & c of Section 271AAB of the Act as to at what percentage the penalty will be levied on the assessee for the undisclosed income not surrendered during the course of search. The assessee deserves an opportunity to plead before the Ld. A.O before being visited with the penalty u/s 271AAB

of the Act. The alleged notice issued u/s 274 r.w.s 271AAB of the Act is liable to be quashed since there is a technical defect in issuing the notice. Reliance placed on the decision of Co-ordinate Bench, Chennai in the case of *DCIT V/s R. Elangovan 1199/CHNY/2017 order dated 05.04.2018* which has also been followed by Jaipur Bench of Tribunal in the case of *Ravi Mathur Vs. DCIT, ITA No.969/JP/2017* laying down *the proposition that show cause notice issued u/s 274 of the Act without drawing requisite levy of penalty u/s 271AAB of the Act is a defective notice and is liable to be quashed.*

6. Per contra Ld. Departmental Representative vehemently argued supporting the orders of lower authorities and also submitted that the legal issue raised by the assessee is liable to be dismissed since in the notice issued u/s 274 of the Act the Ld. A.O has specifically mentioned the section 271AAB of the Act and it may have been a clerical error on the part of the Ld. A.O to use the same proforma as used for issuing notice u/s 274 r.w.s. 271(1)(c) of the Act. On merits the assessee has no case since the alleged addition was not surrendered during the course of search, not included in

the income tax return and taxes not paid and such undisclosed income has rightly been penalized @30% as per the provisions of Section 271 AAB(c) of the Act. Ld. Departmental Representative strongly relied on the judgment of Hon'ble Allahabad High Court in the case of *Pr. CIT vs. Sandeep Chandak (2018) 405 ITR 648*. This judgment of Hon'ble Allahabad High Court stands confirmed by Hon'ble Supreme Court also.

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

the Act. For better understanding we reproduce the provisions of Section 271AAB and 274 of the Act which reads as follows:-

Section 271AAB of the Act.

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

- (a) a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year, if such assessee—*
 - (i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;*
 - (ii) substantiates the manner in which the undisclosed income was derived; and*
 - (iii) on or before the specified date—*
 - (A) pays the tax, together with interest, if any, in respect of the undisclosed income; and*
 - (B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;*
- (b) a sum computed at the rate of twenty per cent of the undisclosed income of the specified previous year, if such assessee—*
 - (i) in the course of the search, in a statement under sub-section (4) of section 132, does not admit the undisclosed income; and*
 - (ii) on or before the specified date—*
 - (A) declares such income in the return of income furnished for the specified previous year; and*
 - (B) pays the tax, together with interest, if any, in respect of the undisclosed income;*
- (c) a sum which shall not be less than thirty per cent but which shall not exceed ninety per cent of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b).*

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

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

Explanation.—For the purposes of this section,—

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

- (b) "specified previous year" means the previous year—
- (i) which has ended before the date of search, but the date of furnishing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the date of search; or
 - (ii) in which search was conducted;
- (c) "undisclosed income" means—
- (i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has—
 - (A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or
 - (B) otherwise not been disclosed to the Chief Commissioner or Commissioner before the date of search; or
 - (ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.'.

Section 274 of the Act

(1) No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.

(2) No order imposing a penalty under this Chapter shall be made-

(a) by the Income- tax Officer, where the penalty exceeds ten thousand rupees;

(b) by the Assistant Commissioner, where the penalty exceeds twenty thousand rupees, except with the prior approval of the Deputy Commissioner.]

(3) An income- tax authority on making an order under this Chapter imposing a penalty, unless he is himself the Assessing Officer, shall forthwith send a copy of such order to the Assessing Officer']

8. From perusal of the above provision we observe that sub section 3 of Section 271AAB of the Act talks about issuing the

notice u/s 274 of the Act. So for initiating the penalty proceedings u/s 271AAB of the Act the first step to be taken by Ld. A.O is to issue a valid notice u/s 274 of the Act. Sub-section (1) to Section 274 of the Act provides a procedure that “ *No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard*”. To comply with this requirement the notice u/s 274 should be clear enough to convey the assessee about the charge which is to be leveled against him/her/it for levying the penalty for the contravention of the related provisions of the Act which in the instant case relates to not surrendering of undisclosed amount during the course of search which is subsequently admitted during the course of assessment and not challenged before the Ld. CIT(A). So it was incumbent for Ld. A.O that in the notice issued u/s 274 of the Act he should have mentioned that penalty u/s 271AAB of the Act may be levied @10/20/ 30% since the assessee falls in Clauses (a)/(b)/(c) of section 271AAB of the Act. He should have further mentioned that as the assessee's case falls under clause-c of section 271AAB of the Act, why she should not be visited by penalty @30% of the undisclosed income. Against this charge the

assessee should have been given a reasonable opportunity of being heard.

9. Now let us revert back to the fact of the instant case of the assessee and look into what has been mentioned in the alleged notices issued u/s 274 r.w.s. 2371AAB of the Act, which are reproduced below;

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

PAN. ACFPB4590H

OFFICE OF THE
Asstt. Commissioner of Income Tax (Central)-I, Indore
Date: 22.03.2016

To
Shri Ashok Kumar Bhatia
33-A Radha Nagar Neelkanth Colony
Indore-452006

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

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

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

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

You are hereby requested to appear before me on 21.04.2016 at 3.30 PM and show cause why an order imposing a penalty on you should not be made under section 271AAB of the Income Tax Act 1961 if you do

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not wish to avail yourself of this opportunity of bearing heard in person or through authorized representative you may show cause in writing on or before the side date which will be considered before any such order is made under section 271AAB.

Sd/-

(Amit Kumar Soni)

Asstt. Commissioner of Income Tax (Central)-I
Indore

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

PAN. ACFPB4590H

Date: 03.06.2016

To
Shri Ashok Kumar Bhatia
33-A Radha Nagar Neelkanth Colony
Indore-452006

Sir,

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

Please refer to the penalty proceedings u/s 271AAB of the Income Tax Act 1961 for the A.Y. 2014-15 in the above mentioned case, you are hereby requested to appear before the undersigned on 10.06.2016 at 11.50AM in my office at Room No.101, Aayakar Bhawan, Main opp. White Church, Indore personally or through authorized representative to show cause as to why penalty u/s 271AAB of the I.T. Act 1961 be not levied against you? If you do not want to appear personally, you may send your written reply on or before above mentioned date, otherwise penalty proceedings shall be decided on merits.

Sd/-

(Amit Kumar Soni)

Deputy Commissioner of Income Tax (Central)-I
Indore

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

PAN. ACFPB4590H

Date: 16.09.2016

To
Shri Ashok Kumar Bhatia
33-A Radha Nagar Neelkanth Colony
Indore-452006

Sir,

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

Please refer to the above

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

S.NO.	A.Y.	Section	Penalty initiated on
1	2014-15	271AAB	22.03.2016

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

Sd/-

(Amit Kumar Soni)

Deputy Commissioner of Income Tax (Central)-I
Indore

10. From going through the above three notices issued to the assessee on 22.03.2016, 03.06.2016 and 16.09.2016, we find that there is no mention about various conditions provided u/s 271 AAB of the Act. The Ld. A.O has very casually used the proforma used for issuing notice before levying penalty u/s 271(1)(c) of the Act for

the concealment of income or furnishing of inaccurate particulars of income. Except mentioning the Section 271AAB of the Act in the notice it does not talk anything about the provision of section 271AAB. Certainly such notice has a fatal error and technically is not a correct notice in the eyes of law because it intends to penalize an assessee without spelling about the charge against the assessee.

11. Hon'ble Jurisdictional High Court in the case of *PCIT V/s Kulwant Singh Bhatia (supra)* dealt the issue of defective notice issued u/s 274 r.w.s. 271(1)(c) of the Act and Hon'ble court after relying judgment of Hon'ble Supreme Court in the case of *CIT V/s Manjunatha Cotton Ginning Factory and CIT v/s SSA'S Emerald Meadows (supra)* held that such show cause notices would not satisfy the requirement of law as notice was not specific. Merely issuing notice in general proforma will negate the very purpose of natural justice. Hon'ble Apex Court in the case of *Dilip N Shraf 161 Taxmann 218* held that “*the quasi criminal proceedings u/s 271(1)(c) of the Act ought to comply with the principles of natural justice*”.

12. In the case of *DCIT V/s R. Elangovan Ltd (supra)* , Co-ordinate Bench, Chennai while dealing with the legal ground challenging the

validity of notice issued u/s 274 r.w.s. 271AAB of the Act had observed that ;

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

"2. This appeal has been filed raising the following substantial questions of law.

(1) Whether, omission if assessing officer to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income makes the penalty order liable for cancellation even when it has been proved beyond reasonable doubt that the assessee had concealed income in the facts and circumstances of the case?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the penalty notice under Section 274 r.w.S. 271(1)(c) is bad in law and

invalid despite the amendment of Section 271 (1 B) with retrospective effect and by virtue of the amendment, the assessing officer has initiated the penalty by properly recording the satisfaction for the same?

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

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

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

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

"Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(l)(c) , i.e., whether it is

for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law;

The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice are offended. On the basis of such proceedings, no penalty could be imposed on the assessee) taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law; penalty proceedings are distinct from the assessment proceedings : though proceedings for imposition of penalty emanate from proceedings of assessment, they are independent and a separate aspect of the proceedings;

The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the proceedings on the merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared invalid in the penalty proceedings".

View taken by the Hon'ble Karnataka High Court in the above judgment was indirectly affirmed by the Hon'ble Apex Court, when it dismissed an SLP filed by the Revenue against the judgment in the case of SSA's Emerald Meadows (supra), specifically observing that there was no merits in the petition filed by the Revenue. Considering the above cited judgments, we hold that the notice issued u/s.274 r.w.s. 271AAB of the Act, reproduced by us at para 5 above was not valid. Ex-consequenti, the

penalty order is set aside.

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

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

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

"5. Before we proceed further, the decisions relied upon by the ld D/R are to be considered. In the case of Principal CIT vs Sandeep Chandak & Others [TS-6389-HC-2017(Allahabad)-O] (supra) the issue before the Hon'ble High Court was the defect in the notice

issued under section 271AAB on account mentioning wrong provision of the Act being 271(1)(c) of the Act. The Hon'ble High Court after considering the fact that the show cause notice issued by the AO though mentions section 271(1) in the caption of the said notice, however, the body of the show cause notice clearly mentions section 271AAB, which was fully comprehended by the assessee as reveals in the reply filed by the assessee against the said show cause notice. Hence the Hon'ble High Court has held as under: -

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

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

Thus it was found by the Hon'ble High Court that the mistake in mentioning the section in the show cause notice is covered under section 292BB and the AO will get the benefit of the same. The said decision will not help the case of the revenue so far as the issue involves the merits of levy of penalty under section 271AAB. As regards the decision of Kolkata Benches of the Tribunal in the case of DCIT vs Amit Agrawal (TS-7675-ITAT-2017(Kolkata)-O) (Supra), we find that the said decision was subsequently recalled by the Tribunal and a fresh order dated 14th March, 2018 was passed by the Tribunal in favour of the assessee. Therefore, the decision relied upon by the Ld D/R is no more in existence.”

15. We, therefore respectfully following the judgment of jurisdictional High Court in the case of *PCIT V/s Kulwant Singh Bhatia (supra)*, decision of Co-ordinate Bench of Chennai in the case of *DCIT V/s R. Elangovan (supra)* and Jaipur Bench in the case of *Ravi Mathur Vs DCIT (supra)* and in the given facts and circumstances of the case wherein the matter written in the body of the notice issued u/s 274 of the Act does not refer to the charges of provision of Section 271AAB of the Act makes the alleged notice defective and invalid and thus deserves to be quashed. Since the penalty proceedings itself has been quashed the impugned penalty of Rs.64,22,348/- stands deleted. Thus assessee succeeds on legal ground challenging the validity of notice issued u/s 274 r.w.s. 271AAB of the Act.

16. Since the penalty u/s 271AAB has been dealt and deleted on the preliminary legal points, other arguments of the assessee dealing with the merits of the levy of penalty are not been dealt with, as the same are rendered academic in nature. Thus grounds raised on merits are dismissed as infructuous. Appeal of the assessee for the Assessment Years 2014-15 is partly allowed.

17. In the result appeal of the assessee for Assessment Year 2014-15 is partly allowed.

The order pronounced in the open Court on 05.02.2020.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 05 February, 2020

/Dev

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

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