आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री डी. करुणाकरा राव , लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA Nos.968 to 971 & 973 to 974/PUN/2015
निर्धारण वर्ष / Assessment Years : 2001-02 to 2004-05
& 2006-07 to 2007-08

Maharashtra Academy of
Engineering and Educational Research,
S.No.124, Ex-Serviceman Colony,
Paud Road, Kothrud,
Pune – 411 029
PAN :AAAAM1206F .... अपीलार्थी/Appellant

Vs.

ITO, Ward-11(1), Pune .... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.2018 to 2021 & 2023 to 2024/PUN/2012
निर्धारण वर्ष / Assessment Years : 2001-02 to 2004-05
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S.No.124, Ex-Serviceman Colony,
Paud Road, Kothrud,
Pune – 411 029
PAN :AAAAM1206F .... अपीलार्थी/Appellant

Vs.

ACIT, Central Circle-1(1),
Pune .... प्रत्यर्थी / Respondent

Assessee by	:	Dr. Sunil Pathak & Shri Mahavir Jain
Revenue by	:	Ms. Nirupama Kotru

सुनवाई की तारीख / **Date of Hearing : 22.11.2017**		घोषणा की तारीख / **Date of Pronouncement: 08.12.2017**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeals in ITA Nos. 968 to 971 & 973 to 974/PUN/2015 filed by the assessee are against separate orders of CIT(A)-10, Pune, all dated 20.03.2015 relating to assessment years 2001-02 to 2004-05 and 2006-07 to 2007-08 are against respective orders passed by Assessing Officer under section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). The appeals in ITA Nos. 2018 to 2021 & 2023 to 2024/PUN/2012 filed by the assessee are against consolidated order of CIT(A)-III, Pune, dated 27.08.2012 relating to assessment years 2001-02 to 2004-05 and 2006-07 to 2007-08 are against respective orders passed by CIT(A) under section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. Both the bunch of appeals filed by the assessee were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. First we shall take up the bunch of appeals in ITA Nos. 968 to 971 & 973 to 974/PUN/2015 where similar issue was raised. However, for the sake of reference to facts and issues, we refer to facts in ITA No.968/PUN/2015. The assessee has raised the following grounds of appeal :

> *"The following grounds are taken without prejudice to each other-*
>
> *On facts and in law,*
>
> *1] The learned CIT(A) erred in confirming the levy of penalty u/s 271(1)(c) of Rs.2,84,73,372/-.*
>
> *2] The assessee submits that the reopening u/s 148 is bad in law and accordingly, the reasst. order and the penalty order passed u/s 271 (1)(c) be declared null and void.*
>
> *3] The learned CIT(A) erred in holding that the assessee trust had violated the provisions of Section 13 (1)(c) resulting in denial of exemption u/s 11/10(23C)(vi) and hence, the levy of penalty on account of disallowance of exemption u/s 11/1O(23C)(vi) was justified.*
>
> *4] The learned CIT(A) erred in holding that the explanation 1 to Section 271(1)(c) was attracted in the case of the assessee trust and hence, the levy of penalty was justified on the facts of the case.*
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> *5] The learned CIT(A) erred in holding that the assessee trust had concealed its income as well as furnished inaccurate particulars of income by providing undue benefits to the trustees and related parties and hence, the learned A.O. was justified in levying the penalty on account of disallowance of exemption u/s 11.*
>
> *6] The learned CIT(A) failed to appreciate that the assessee trust had not provided any benefit to the trustees and their relatives and accordingly, there was no question of violation of provisions of Section 13(1)(c) and hence, the denial of exemption u/s 11 was also not justified and the penalty levied may also kindly be deleted.*
>
> *7] The learned CIT(A) erred in not appreciating that the issue whether the assessee had violated the provisions of section 13 (1)(c) was a debatable one and two opinions were clearly possible and hence, the question of levy of penalty on such debatable issue simply does not arise.*

8] The learned CIT(A) ought to have appreciated that the assessee trust had submitted its explanation that no benefit was provided to the trustees and the levy of penalty by simply rejecting the explanation furnished without proving it to be false is not justified at all.

9] The learned CIT(A) failed to appreciate that there was no concrete evidence that the assessee had provided benefit to the trustees and the denial of exemption u/s 11 on this ground was based on presumptions and surmises and hence, the levy of penalty on such basis is invalid in law.

10] Without prejudice, the assessee submits that assuming without admitting that it had provided any benefit to the trustees, the income only to the extent of the violation of Section 13(1)(c) can be taxed and hence, the levy of penalty should be restricted only on the amount of violation of Section 13 (1)(c) and not on the entire assessed income.

11] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."

4. Further, the assessee has also raised additional ground of appeal which reads as under :

"1] The assessee submits that the penalty order passed u/s 271(1)(c) be declared null and void since no concrete finding has been given by the learned A.O. in the penalty order as to whether the penalty is being levied for concealment of income or for filing inaccurate particulars of income and hence, the penalty order passed u/s 271(1)(c) is bad in law and the penalty levied may kindly be deleted.

The assessee submits that the additional ground raised is legal in nature and as all the facts are on record, the assessee requests for admission of the above ground."

5. The Ld. Authorised Representative for the assessee pointed out that the additional ground of appeal being purely legal in nature merits to be admitted. He further stated that the additional ground of appeal goes to the jurisdiction of the issue of levy of penalty under section 271(1)(c) of the Act and hence the same needs to be adjudicated first.

6. The issue raised vide additional ground of appeal is as to whether in the absence of any concrete finding of the Assessing Officer in the penalty order as to whether the penalty is being levied for concealment of income or for furnishing of inaccurate particulars of income and hence the penalty order passed under section 271(1)(c) of the Act is bad in law, is purely legal issue and does not involve

any investigation of facts and hence we admit the same and proceed to adjudicate the said issue first.

7. Briefly, in the facts of the case, the assessee is a trust which is running several Educational institutions. For the years under consideration, the assessee had claimed its entire income as exempt under section 10(23C)(vi) of the I.T. Act. The Assessing Officer however denied the said exemption claimed under section 10(23C)(vi) of the Act. The Assessing Officer further held the assessee to have deliberately filed inaccurate particulars of its income and claimed deduction under section 10(23C)(vi) of the Act though not eligible and hence penalty proceedings under section 271(1)(c) of the Act were initiated. In the assessment order, the Assessing Officer, directed 'Issue of notice under section 274 read with section 271(1)(c) of the Act'. The CIT(A) upheld the order of the Assessing Officer in not granting the exemption under section 10 (23C)(vi) and under section 11 of the Act. The Tribunal in ITA Nos. 915 to 920/PUN/2012 for the assessment years 1999-2000 to 2004-05 order dated 10.02.2017 held the assessee to be entitled to the exemption under section 11 of the Act except for the violation under section 13(1)(c) of the Act. The said issue was decided by the Tribunal vide Para Nos. 148 to 152 of its order. Further the Tribunal in ITA Nos. 921 to 923/PUN/2012 relating to assessment years 2005-06 to 2007-08 order dated 16.05.2017 also held similarly.

8. Meanwhile, the Assessing Officer vide order dated 28.03.2013 levied penalty under section 271(1)(c) of the Act. The said penalty was levied for both cancellation of Registration and denial of exemption under section 10(23C)(vi) of the Act. The Assessing Officer while passing the order levying penalty under section 271(1)(c) of the Act vide Para No.18 had recorded a satisfaction that the assessee had concealed particulars of income or furnished inaccurate particulars of income, as brought out in the assessment order and hence was liable to levy of

penalty. The said penalty levied by the Assessing Officer was confirmed by the CIT(A) against which the assessee is in appeal before us.

9. The Ld. Authorised Representative for the assessee pointed out that the income was assessed in the hands of the assessee because of the denial of deduction under section 10 (23C)(vi), 11 and 12 of the Act. However, the Tribunal has allowed the said deduction to the assessee except on certain facilities which were provided to the Trustee and on expenditure of Foreign tours of trustees and also further concessional educational expenses incurred on relatives of the trustees. The Ld. Authorised Representative for the assessee referring to the order of the Assessing Officer pointed out that the Assessing Officer had initiated the penalty only on the issue of denial of exemption under section 10(23C)(vi) of the Act though various additions were made in the hands of the assessee. He further referred to the said directions of the Assessing Officer where the Assessing Officer has failed to record a satisfaction as to which limb of section 271(1)(c) of the Act has not been fulfilled by the assessee.

10. Our attention was further drawn to the penalty order passed by the Assessing Officer where he has failed to come to a finding again as to which limb of section 271(1)(c) of the Act has not been fulfilled. He levied penalty for concealment of income or furnishing inaccurate particulars of income. The Ld. Authorised Representative for the assessee in this regard placed reliance on the ratio laid down by the Hon'ble Bombay High Court in the case of CIT Vs. Samson Perinchery vide Tax Appeal No.1154 of 2014 and other connected appeals, judgment dated 05-01-2017 and the decision of Pune Bench of the Tribunal in the case of Kanhaiyalal D. Jain Vs. ACIT in ITA Nos. 1201 to 1205/PN/2014 relating to assessment years 2003-04 to 2007-08, order dated 30.11.2016. He also pointed out that the Assessing Officer has failed to strike out irrelevant limb in the notice issued under section 271(1)(c) of the Act and for such act of the Assessing Officer

the initiation and levy of penalty under section 271(1)(c) of the Act was invalid and bad in law. In this regard, he placed his reliance on the ratio laid down by the Mumbai Bench of the Tribunal in the case of Meherjee Cassinath Holdings Pvt. Ltd. Vs. ACIT for assessment year 2008-09 in ITA No.2555/Mum/2012, order dated 28.04.2017.

11. The Ld. Departmental Representative for the Revenue in reply pointed out that the additions have been sustained by the Tribunal on merits and once the additions have been sustained then there is a case for levy of penalty under section 271(1)(c) of the Act . With regard to the failure of the Assessing Officer to strike off the irrelevant portion in the notice issued, he placed reliance on the ratio laid down by the Mumbai Bench of the Tribunal in the case of Earthmoving Equipment Service Corporation Vs DCIT for assessment year 2010-11 in ITA No.6617/Mum/2011, order dated 02.05.2017.

12. We have heard the rival contentions and perused the record. The issue arising in the bunch of appeals is against levy of penalty under section 271(1)(c) of the Act, wherein the basic jurisdiction of the Assessing Officer to levy of penalty for concealment has been challenged by the assessee. The case of the assessee before us is that in the absence of the Assessing Officer recording a proper satisfaction as to which limb of section 271(1)(c) of the Act has not been fulfilled by the assessee and for failure of the Assessing Officer to give a show cause notice to the assessee in this regard, the said penalty proceedings initiated in the case are invalid. Further the order levying penalty under section 271(1)(c) of the Act has also been challenged by the assessee since the Assessing Officer while levying the penalty for concealment has not come to a finding as to whether the assessee has concealed his income or furnished inaccurate particulars of income. In the absence of the same, the penalty order has been challenged being invalid and bad in law.

13. Penalty for concealment under section 271(1)(c) of the Act is attracted where the assessee has either concealed his income or furnished inaccurate particulars of income. The Assessing Officer in this regard has to record a satisfaction and to that extent show cause the assessee. Further, while levying the penalty under section 271(1)(c) of the Act, AO has to come to a finding as to the limb for which show cause notice was issued to the assessee, stands fulfilled and thus work out the penalty for concealment on non-fulfilment of such limb of section 271(1)(c) of the Act. The two limbs of section 271(1)(c) of the Act are distinct and the AO in this regard has to come to a finding and record a satisfaction for non-fulfilment of either of the limbs of section 271(1)(c) of the Act. In some cases where more than one additions is made, it can be a case where for one addition one limb is satisfied and for another addition the second limb of section 271(1)(c) is satisfied. It is incumbent upon the Assessing Officer in such a situation to come to a finding. In the absence of the same, the penalty proceedings initiated stands vitiated and the penalty order passed consequent to such initiation of penalty proceedings is both invalid and bad in law.

14. The Hon'ble Bombay High Court in the case of CIT Vs. Samson Perinchery (supra) has laid down the proposition that the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under section 271(1)(c) of the Act, for initiation of penalty proceedings will not warrant/permit penalty being imposed for the other breach. It was further observed that the assessee would respond to the ground on which the penalty has been initiated/notice issued. It was thus held that that the order imposing penalty has to be made only on the ground on which the penalty proceedings had been initiated and it cannot be on a fresh ground on which the assessee has no notice.

15. Further, the Pune Bench of the Tribunal in the case of Kanhaiyalal D. Jain Vs. ACIT for the assessment years 2003-04 to 2007-08 in ITA Nos. 1201 to

1205/PN/2014 order dated 30.11.2016 has also laid down the said proposition by holding as under :

> *"13. We have heard the rival contentions and perused the record. The issue arising in the present bunch of appeals is jurisdictional issue of levy of penalty under section 271(1)(c) of the Act. The requirement of section is that where the Assessing Officer or the Commissioner of Appeals or the Principal Commissioner or Commissioner, in the course of any proceedings under the Act, is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, then he may direct that such person shall pay by way of penalty the amounts as specified in sub-clause (iii) which would be in addition to tax, if any, payable by the said person. The section thus requires the concerned Officer to record satisfaction in the course of any proceedings under the Act, that the person has concealed the particulars of his income or furnished inaccurate particulars of his income. After recording the satisfaction, during the course of penalty proceedings also, the concerned Officer has come to a finding that as to whether the person has concealed the particulars of his income or furnished inaccurate particulars of such income and thereafter, levy the penalty accordingly. The word used between the two acts i.e. concealment of particulars of income and furnishing of inaccurate particulars of such income is 'or'. So the penalty levied by the concerned Officer is on satisfaction of any of the limbs and not the satisfaction of both the limbs. Where the assessee had concealed the particulars of income in particular circumstances, then the Assessing Officer may record satisfaction to that effect and initiate penalty proceedings and thereafter on fixation of charge, levy the penalty for such act of concealing the particulars of income. Similarly, in cases where the assessee concerned had furnished inaccurate particulars of such income, then similar exercise has to be carried out by the concerned Officer.*
>
> *14. The first stage of invocation of provisions of section 271(1)(c) of the Act is the satisfaction to be recorded by the Assessing Officer, which admittedly, has to be during the course of assessment proceedings. So, where the assessment proceedings are pending, then the Assessing Officer has to apply his mind and on being satisfied, he has to give a finding that the assessee before him has either concealed the particulars of income or furnished inaccurate particulars of income in respect of the issue before him. Thereafter, the notice should be issued to such person by the concerned Officer, wherein it should be clear that the assessee has to justify its case either for concealment of income or furnishing of inaccurate particulars of income. There may be cases where there is issue of both concealment of income and furnishing of inaccurate particulars of income, based on the nature of additions, then in such cases, satisfaction and notice thereon should specify exact charge against the assessee. The charge has to be further specified while completing penalty proceedings and the Assessing Officer has to come to a conclusion as to whether it is case of concealment of income or furnishing of inaccurate particulars of income. The question which further arises where the satisfaction recorded by the Assessing Officer and the notice issued thereafter is without application of mind, then can the subsequent order passed levying penalty be held to be valid?. The Hon'ble Karnataka High Court in CIT & Anr. Vs. Manjunath a Cotton and Ginning Factory (supra) had dealt upon the issue of notice under section 274 of the Act for the purpose of levying penalty for concealment and observed as under:-*

"59. As the provision stands, the penalty proceedings can be initiated on various ground set out therein. If the order passed by the Authority categorically records a finding regarding the existence of any said grounds mentioned therein and then penalty proceedings is initiated, in the notice to be issued under Section 274, they could conveniently refer to the said order which contains the satisfaction of the authority which has passed the order. However, if the existence of the conditions could not be discerned from the said order and if it is a case of relying on deeming provision contained in Explanation-1 or in Explanation-1(B), then though penalty proceedings are in the nature of civil liability, in fact, it is penal in nature. In either event, the person who is accused of the conditions mentioned in Section 271 should be made known about the grounds on which they intend imposing penalty on him as the Section 274 makes it clear that assessee has a right to contest such proceedings and should have full opportunity to meet the case of the Department and show that the conditions stipulated in Section 271(1)(c) do not exist as such he is not liable to pay penalty. The practice of the ITA Nos.1201 to 1205/PN/2014 Kanhaiyalal D. Jain Department sending a printed farm where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law when the consequences of the assessee not rebutting the initial presumption is serious in nature and he had to pay penalty from 100% to 300% of the tax liability. As the said provisions have to be held to be strictly construed, notice issued under Section 274 should satisfy the grounds which he has to meet specifically Otherwise, principles of natural justice is offended if the show cause notice is vague. On the basis of such proceedings, no penalty could be imposed on the assessee.

60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(1)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.

61. The Assessing Officer is empowered under the Act to initiate penalty proceedings once he is satisfied in the course of any proceedings that there is concealment of income or furnishing of inaccurate particulars of total income under clause (c). Concealment, furnishing inaccurate particulars of income are different. Thus the Assessing Officer while issuing notice has to come to the conclusion that whether is it a case of concealment of income or is it a case of furnishing of inaccurate particulars. The Apex Court in the case of Ashok Pai reported in [2007] 292 ITR 11 (SC) at page 19 has held that concealment of income and furnishing inaccurate particulars of income carry different connotations. The Gujarat High Court in the case of Manu Engineering Works reported in [1980] 122 ITR 306 (Guj) and the Delhi High Court in the case of CIT v. Virgo Marketing P. Ltd. reported in [2008] 171 Taxman 156, has held that levy of penalty has to be clear as to the limb for which it is levied and the position being unclear penalty is not sustainable. Therefore, when the Assessing Officer proposes to invoke the first limb being concealment, then the notice has to be appropriately marked. Similar is the case for furnishing inaccurate particulars of income. The standard proforma without striking of the relevant clauses will lead to an inference as to non-application of mind."

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. . . .

22. Now, coming to the facts of the case before us, wherein search and seizure operations were carried out on Chhoriya group of concerns on 22.08.2008 and declaration of Rs.11.44 crores was made in the hands of whole group for various years. Consequent to the notices issued under section 153A of the Act for various years, different entities filed the return of income for the respective years and cumulatively for Rs.13.99 crores as additional income. The income was declared on account of on-money on sale of plots, which was detected from the documents seized during the course of search. Admittedly, Explanation 5A to section 271(1)(c) of the Act is attracted in such cases. However, the case of assessee before us is that the Assessing Officer while completing the assessment proceedings had to be satisfied that the assessee had either concealed the income or furnished inaccurate particulars of income and is liable to levy of penalty under section 271(1)(c) r.w.s. Explanation 5A of the Act. The notice is to be issued to the assessee under section 274 of the Act. Before issuing such notice, satisfaction has to come out from the proceedings going on before the Assessing Officer. The perusal of assessment order passed in the present case reflects that the Assessing Officer while initiating proceedings has recorded satisfaction as to the assessee has furnished inaccurate particulars of income and has also concealed the income. The only source of addition in the hands of assessee is additional income offered by the assessee pursuant to search operations. In such circumstances, it is categorically a case of concealment. However, the Assessing Officer refers to both the limbs of section 271(1)(c) of the Act and the satisfaction recorded in this case suffers from infirmity. Further, even in the notice issued under section 274 of the Act, irrelevant part has not been struck off. While completing penalty proceedings also, the Assessing Officer makes reference to both the limbs i.e. concealment of income and furnishing of inaccurate particulars of income and in the final, levies penalty for concealment of income.

23. However, the question which is raised before us by way of additional ground of appeal is root of start of the proceedings i.e. recording of satisfaction and the issue of notice, which has been challenged by the

> *assessee to be invalid. Applying the ratio laid down by the Hon'ble Karnataka High Court in CIT & Anr. Vs. Manjunath C otton and Ginning Factory (supra) and CIT Vs. SSA'S Emerald Meadows (supra) and in view of SLP being dismissed, we find merit in the plea of assessee that the satisfaction recorded in the present case to initiate penalty proceedings both for concealment of income and furnishing of particulars of income against additional income offered by the assessee is incorrect. Further, where the assessee is not aware of exact charge against him, the ambiguity in the notice issued under section 274 r.w.s. 271(1)(c) of the Act by not striking of portion which is not applicable, prejudice the right of reasonable opportunity to the assessee, as he was not made aware of exact charge he had to face. It is a clear-cut case of concealment since the assessee had offered additional income pursuant to search carried out at its premises. It is not the case of furnishing of inaccurate particulars of income and hence, the Assessing Officer should have recorded the satisfaction accordingly and issued the notice accordingly."*

16. Further, the Pune Bench of the Tribunal in the case of Kanhaiyalal D. Jain Vs. ACIT (supra), at Para No.24, had further deliberated on the issue of non striking of the inapplicable portion in the notice issued under section 271(1)(c) of the Act and had applied the proposition laid down by the Hon'ble High Court in the case of CIT Vs. Smt. Kaushalya (1994) 75 Taxmann 549 (Bom.). The Hon'ble Bombay High Court held that mere mistake in the language used or mere non-striking of inappropriate limb could not itself invalidate the notice. However, the Hon'ble High Court further held that where there existed vagueness and ambiguity in the notice issued which could demonstrate non-application of mind by the authority and the penalty proceedings initiated for assessment years 1967-68 were quashed by the Hon'ble Bombay High Court. Applying the said principle, it was held by the Tribunal in the case of Kanhaiyalal D. Jain Vs. ACIT (supra) that application of mind before issuing the notice under section 274 of the Act had to be considered. In a case, where there was vagueness and ambiguity in the notice issued, then that would ultimately prejudice the right of opportunity of hearing of the assessee as contemplated under section 274 of the Act and such notice was invalid.

17. In view of the ratio laid down by the jurisdictional High Court, we find no merit in the reliance placed by the Ld. Departmental Representative for the

Revenue on the ratio laid down by the Mumbai Bench of the Tribunal in the case of Earthmoving Equipment Service Corporation Vs. DCIT (supra).

18. Another reliance which was placed by the Ld. Departmental Representative for the Revenue was on the ratio laid down by the Hon'ble Apex Court in the case of Mak Data Pvt. Ltd. Vs. CIT reported in (2013) 358 ITR 593 (SC) judgment dated 30.10.2013, wherein it was held that the satisfaction of the Assessing Office need not be recorded in a particular manner. However, the context of the ratio laid down by the Hon'ble Apex Court was different wherein it was held that manner of recording satisfaction could be different. On the issue before us, the issue is not the manner of recording satisfaction but satisfaction *per se* to be recorded by the Assessing Officer.

19. Now coming to the facts of the present case, we find that the Assessing Officer while completing the assessment has not recorded proper satisfaction as to which limb of section 271(1)(c) of the Act has not been fulfilled by the assessee and consequently no proper show cause notice was given to the assessee before initiating the penalty proceedings under section 271(1)(c) of the Act. Even otherwise, the said satisfaction was recorded in respect of the non denial of exemption under section 10(23C)(vi) of the Act and not in respect of other additions made by the Assessing Officer. Further, the Assessing Officer while levying the penalty under section 271(1)(c) of the Act, in the order imposing the penalty for concealment has held the assessee to have concealed its income or furnished inaccurate particulars of income. In other words, the Assessing Officer has failed to come to a finding as to which limb of section 271(1)(c) of the Act has not been fulfilled by the assessee. In the absence of the same, we find no merit in the order levying penalty under section 271(1)(c) of the Act. First, the satisfaction recorded by the Assessing Officer while completing the assessment is incomplete and further even the order passed for levying the penalty for concealment is both

in valid and bad in law. Accordingly, we hold so and direct the Assessing Officer to delete the penalty levied under section 271(1)(c) of the Act for assessment years 2001-02 to 2004-05 and 2006-07 to 2007-08.

20. Before parting with this issue, it may also be mentioned that the penalty was levied by the Assessing Officer on denial of exemption under section 10(23C)(vi) of the Act and/or exemption under section 11 of the Act. However, the Tribunal in the assessee's own case vide its orders dated 10.02.2017 and 16.05.2017 has allowed the said exemption under section 11 and 12 of the Act except for certain items for violation of the provisions of section 13(1) (c), i.e. on account of facilities to the Directors, expenditure of Foreign Tours of the Trustees and Concessional Education to the relatives of the assessee.

21. The facts and issue in ITA Nos.969 to 971 & 973 to 974/PUN/2015 are identical to the facts and issue in ITA No.968/PUN/2015 and our decision in ITA No. No.968/PUN/2015 shall apply *mutatis mutandis* to ITA Nos.969 to 971 & 973 to 974/PUN/2015.

22. Since we have decided the jurisdictional issue raised by the assessee by way of Additional Ground and the penalty proceedings have been held to be invalid and bad in law, we find adjudication of the grounds of appeal on merits of the case become academic in nature. Therefore, the grounds of appeal raised by the assessee are dismissed as academic.

23. Now coming to the bunch of appeals in ITA Nos. 2018 to 2021 & 2023 to 2024/PUN/2012 filed by the assessee against the levy of penalty for concealment under section 271(1)(c) of the Act which is on the enhancement made by the CIT(A) on different grounds, part of which has been sustained by the Tribunal. The CIT(A) initiated the penalty proceedings in the appellate order passed. Thereafter, order imposing penalty under section 271(1)(c) of the Act was passed

by the CIT(A) vide order dated 27.08.2012 against which the assessee has preferred the present bunch of appeals. The said penalty under section 271(1)(c) of the Act has been levied in the case of the assessee on account of the following issues :

(i) Disallowance of part expenses,

(ii) Expenditure on Foreign Tour expenses where the assessee had failed to provide proper proof for incurring the expenditure other than the Travelling expenses.

(iii) Expenditure on concessional education given to Mr. Rahul Karad

24. The assessee is aggrieved by the aforesaid order of the CIT(A), firstly, on the ground of adhoc disallowance of expenses and it has been pointed out that there is no merit in levying penalty on such disallowances. The second issue is the expenditure on Foreign Tours of the Trustees where the plea of the assessee is that though it had incurred Foreign Tour expenses during the respective years but part of the expenses were disallowed on the ground that the activities were not for approved objects. In respect of the concessional education granted to the relatives of the Trustees, the case of the assessee is that the said concession was given to the children of employees and trustees and where the trustees were not given any specific benefit, there was no merit in disallowing the same and levying the penalty for concealment on such disallowance.

25. The Ld. Authorised Representative for the assessee submitted that the issue was whether such disallowances made by the CIT(A) and upheld by the Tribunal, merits levy of penalty under section 271(1)(c) of the Act. It was stressed by him that originally the Assessing Officer made certain additions on account of various heads of disallowances and the amount was enhanced by the CIT(A). In respect of the additions made by the Assessing Officer and the penalty levied under section 271(1)(c) of the Act, has been claimed to be not leviable on the jurisdictional issue, which is argued in the first bunch of appeals. In the second

bunch of appeals, the amount which has been enhanced by the CIT(A) and confirmed by the Tribunal, i.e. disallowance of certain expenditure is challenged and such disallowances does not merit the levy of penalty for concealment.

26. The Ld. Departmental Representative for the Revenue on the other hand stressed that once the enhancement of disallowance made by the CIT(A) has been confirmed by the Tribunal and where the assessee has failed to establish its claim of expenditure, then there is no merit in the plea of the Ld. Authorised Representative for the assessee in this regard.

27. We have heard the rival contentions and perused the record. The issue which arises in the second bunch of appeals is also against the levy of penalty under section 271(1)(c) of the Act by the CIT(A) on such enhanced income which were made by him while passing the appellate order for the instant assessment years. For ready reference and in order to adjudicate the issue we would make a reference to the tabulated chart filed by the assessee for the respective assessment years which briefly gives the details of amounts originally assessed in the hands of the assessee, again enhanced by the CIT(A) and income sustained by the Tribunal. The assessee in this regard has filed the tabulated chart which reads as under :

A.Y.	Description	Amount originally assessed & penalty levied by AO	Amount enhanced and penalty levied by CIT(A)	Income sustained by ITAT
2001-02	1. Facilities to Shri B.E. Avhad			
	Vehicle Maintenance (50% disallowed	21,850	-	10,925
	Depreciation on car (0% disallowed)	-	-	-
	Credit Card Expenses (50% disallowed)	180,004	-	90,002
	Honorarium paid (50% disallowed)	-	-	-
	2. Expenditure on Foreign Tours of trustees	152,930	130,492	283,422
	3. Concessional Education to relative of trustees	92,400	62,320	154,720

	4. Other Income assessed in view of denial of exemption u/s.11 & 12 but deleted by ITAT	80,763,536		
	Assessed Income	81,120,720	192,812	539,069
	Penalty levied on income 28,473,372	28,473,372	57,844	
2002-03	1. Facilities to Shri B.E. Avhad			
	Vehicle Maintenance (50% disallowed	-	143,893	71,947
	Depreciation on car (0% disallowed)	-	171,388	-
	Credit Card Expenses (50% disallowed)	-	242,566	121,283
	Honorarium paid (50% disallowed)	-	-	-
	2. Expenditure on Foreign Tours of trustees	-	24,700	24,700
	3. Concessional Education to relative of trustees	-	88,680	88,680
	4. Other Income assessed in view of denial of exemption u/s.11 & 12 but deleted by ITAT	19,862,618		
	Assessed Income	19,862,618	671,227	306,610
	Penalty levied on income 28,473,372	6,077,960	201,368	
2006-07	1. Facilities to Shri B.E. Avhad			
	Vehicle Maintenance (50% disallowed	-	236,191	118,096
	Depreciation on car (50% disallowed)	-	280,057	140,029
	Credit Card Expenses (50% disallowed)	-	210,636	105,318
	Honorarium paid (50% disallowed)	-	180,000	90,000
	2. Expenditure on Foreign Tours of trustees	-	1,057,333	1,057,333
	3. Scholarship given to Shri Rahul Karad	-	544,797	544,797
	4. Interest on loan given to Shri Rahul Karad	-	127,529	127,529
	5. On money payment for purchase of land	7,358,000	-	7,358,000
	6. Other income assessed in view of denial of exemption u/s.11 & 12, but deleted by ITAT	178,023,290	-	-
	Assessed Income	185,381,290	2,636,543	9,541,101
	Penalty levied on income	59,223,057	806,782	

28. In assessment years 2003-04, 2004-05 and 2007-08 the additions are similar to the additions made in assessment year 2002-03. The perusal of the above details in assessment year 2001-02 would reflect that in respect of

expenditure on Foreign Tours of the trustees, the Assessing Officer made disallowance of Rs.1,52,930/-. The CIT(A) enhanced the same by Rs.1,30,492/- and the total disallowance which is sustained by the Tribunal is Rs.2,83,422/-. Similarly, in respect of the expenditure incurred on concessional education to relatives of the trustees, the AO made disallowance of Rs.92,400/- which was enhanced by the CIT(A) by Rs.62,320/- and the disallowance which was sustained by the Tribunal was at Rs.1,54,720/-. The relevant findings of the Tribunal (supra) are given at pages 155 to 157 of the order of the Tribunal dated 10.02.2017. The perusal of the same reflects that while deciding the issue of expenditure incurred on Foreign Tours of the trustees by Mr. Rahul V. Karad and Mr. V. D. Karad it was observed that the assessee in addition to the Plane tickets, purchased personal articles like Sunglasses, Perfumes and Shirts etc. and was unable to explain the source. The Tribunal (supra) noted that the daughter of Mr. V.D. Karad, Managing Trustee was staying in Australia and though the assessee claimed that such expenditure was on account of attending the World Peace tour, but no merit was found in the argument of the assessee and the expenditure of Rs.1,52,930/- for assessment year 2001-02 was held to be not for the objects of the trust. Similarly, the Foreign Travel expenses in other years were held to be not for the objects of the trust and the same were brought to tax by Tribunal (supra) vide Para No. 156 at page 113 of the order. The Tribunal further considered the claim of the assessee, vis-a-vis concessional education given to employees of Trust wherein it was held that the same was not covered by the provisions of section 13(1)(c) of the Act and hence the same were allowed in the hands of the assessee. However, in respect of the relatives of the trustees, as defined in Explanation to section 13, the Tribunal (supra) held that the same cannot be allowed as an expenditure in the hands of the assessee.

29. In the assessment year 2002-03, further disallowance was made in addition on the facilities provided to Mr. B.E. Avhad, who was a Senior Advocate. The

Tribunal (supra) vide Para No.158 of the order observed that in the absence of full particulars given on account of each and every expenditure incurred by Mr. B.E. Avhad through his credit card, 50% of the expenditure was for the objects of the trust and the balance 50% was towards his personal expenditure which was disallowed. Further, the Tribunal while allowing the exemption u/s.11 of the Act, held that there could not be wholesale denial of the said exemption for violation of provisions of section 13(1)(c) of the Act. The income which was subject matter of violation under section 13(1)(c) of the Act were brought to tax. The Tribunal (supra) vide Para No.152 held so. Further, the Tribunal (supra) considered the expenses incurred by the trust which was covered by the aforesaid violation of section 13(1)(c) of the Act and the first expenditure was towards the Vehicle expenses, i.e. Expenditure incurred on Mr. B.E. Avhad who was a Lawyer and was also attending to various works of the trust. The Tribunal held that 50% of the vehicle maintenance expenses should be held for the objects of the trust and the balance 50% was disallowed. Further, depreciation on motor car which was owned by the trust and which was used by Mr. B.E. Avhad was allowed in the hands of the assessee trust. In view thereof, the Tribunal has disallowed the expenses on facilities provided to Mr. B.E. Avhad being in violation of the provisions of section 13(1)(c) of the Act in respect of Vehicle maintenance expenses. Further, the disallowance has been made on account of credit card expenses as total credit card expenses were debited to the trust, whereas Mr. B.E. Avhad was a practicing Lawyer and was travelling to Supreme Court and Bombay High Court, both on his own account and on account of the trust. Similarly, the expenditure incurred on Foreign Travel of the trustees also has been disallowed in the absence of the assessee furnishing complete documentation as to whether the same was incurred for carrying on the business of the assessee. It was observed by the Tribunal that the assessee has failed to give evidence in this regard.

30. The next issue on which the disallowance was upheld by the Tribunal was on concessional education given to the son of the trustee which was in violation of the provisions of section 13(1)(c) of the Act . In later years, the disallowance was made on account of interest free loan given to Mr. Rahul Karad again in violation of section 13(1)(c) of the Act. The Tribunal had held that the concession in education given to the employees or their relatives is allowable in the hands of the assessee. However, concession given to the relatives of the Directors of the assessee trust attracts the provisions of section 13(1)(c) of the Act and hence the disallowance in the hands of the assessee trust.

31. Once the disallowance has been upheld in the hands of the assessee trust on account of non-fulfilment of the provisions of the Act, the said disallowances may be concessional educational expenses or loan given to relatives of trustees and foreign travel expenses of trustees cannot be said to be mere adhoc disallowance of expenses in the hands of the assessee trust. Accordingly, we hold that there is no merit in the plea of the assessee in this regard. The assessee is liable to levy of penalty for concealment under section 271(1)(c) of the Act in respect of the enhancement of disallowance made by the CIT(A) in this regard.

32. Various Courts have time and again held that where the assessee has failed to comply with the provisions of the Act, then penalty for concealment is leviable under section 271(1)(c) of the Act. As pointed out in the paras above, the disallowance which was made on account of travelling, where the assessee has failed to explain the necessity of the expenditure and its relation to the objects of the trust; the disallowance made on account of the concession in education or loan given to the relatives of the employees was for the violation of the provisions under section 13(1)(c) of the Act and the same was held to be not for the objects of the trust. The provisions of section 13(6) of the Act clearly provide that on such violation, the assessee, an educational institution, is not entitled to claim

exemption under section 11 and 12 of the Act. Once the expenditure is disallowed in the hands of the assessee for violation of the clear cut provisions of the Act, then the issue of levy of penalty for concealment stands established and assessee is liable to the same. Similarly where the travelling expenses on Directors have been disallowed for want of it being for objects of Trust, the levy of penalty for concealment stands established.

33. Another ground on which penalty has been levied is the expenditure incurred on account of vehicle maintenance and credit card expenses of Mr. B.E. Avhad. The said person was a Senior Advocate and the assessee trust had incurred expenditure on his travel to Bombay High Court and Supreme Court. However, the findings of the Tribunal that beside attending to the disputes of the assessee before the Hon'ble Bombay High Court and the Apex Court, the said person was also carrying on his profession of Advocate. In the absence of the details being given by the trust on account of each and every expenditure booked, 50% of such expenditure was disallowed being his personal expenditure. Vis-a-vis the said disallowance, we hold that same has been upheld in the hands of the assessee for want of proof and not for violation of any of the provisions of the Act. In view thereof, we find no merit in the levy of penalty under section 271(1)(c) of the Act on such partial disallowance of expenditure on maintenance of car and credit card expenses of Mr. B.E. Avhad. In assessment year 2006-07, disallowance on depreciation of car and Honorarium paid, i.e. facilities to Mr. B.E. Avhad have been upheld to the extent of 50%. We hold that the assessee is not liable to levy of penalty on partial disallowance of facilities provided to Mr. B.E. Avhad.

34. However, the assessee is liable to levy of penalty under section 271(1)(c) of the Act on the expenditure incurred on Foreign Tour of the trustees, scholarship given to the relatives of the trustees and also on the interest on loan given to

relatives of the trustees, disallowance of which under section 13(1)(c) of the Act has been upheld in the hands of the assessee. Hence, grounds of appeal raised by the assessee are partly allowed.

35. In the result, the appeals of the assessee in ITA Nos. 968 to 971 & 973 to 974/PUN/2015 and in ITA Nos. 2018 to 2021 & 2023 to 2024/PUN/2012 are partly allowed.

Order pronounced in the open court on this 08th day of December, 2017.

Sd/-	**Sd/-**
(D.KARUNAKARA RAO)	**(SUSHMA CHOWLA)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे Pune; दिनांक Dated : 08th December, 2017.
सतीश

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-3 & 10, Pune
4. CIT-3 & 10, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B Bench" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune