In the Income-Tax Appellate Tribunal,
Agra Bench, Agra

Before : Shri Laliet Kumar, Judicial Member And
Dr. Mitha Lal Meena, Accountant Member

ITA No. 274/Agra/2018
Assessment year: 2013-14

ACIT, Circle-1, Gwalir. **(Appellant)**	vs.	M/s. Fairyland Hotel & Resorts Pvt. Ltd., A-225, City Center, Patel Nagar, Gwalior. PAN: AAACF9992K **(Respondent)**

C.O. No. 45/Agra/2018
(in ITA No. 274/Agra/2018)
Assessment year: 2013-14

M/s. Fairyland Hotel & Resorts Pvt. Ltd., A-225, City Center, Patel Nagar, Gwalior **(Appellant)**	vs.	ACIT, Circle-1, Gwalir. **(Respondent)**

Revenue by	Shri Deependra Mohan, CA
Assessee by	Smt. Sita Srivastava, Sr. DR

Date of Hearing	03.03.2021
Date of Pronouncement	09.03.2021

ORDER

Per Laliet Kumar, J.M.:

The appeal by the Revenue and cross objection by the assessee are directed against the order dated 10.01.2018 of ld. CIT(A), Gwalior for assessment year 2013-14. The grounds raised in Revenue's appeal read as under :

"1. Whether on the facts and circumstances of the case, the order of the CIT(A) is perverse to the facts of the case.

2. Whether on the facts and circumstances of the case, the CIT(A) has justified in law in deleting penalty of Rs.70,00,000/- by ignoring binding supreme Court decision given in the case of MAK Data (P) Ltd. v. CIT (2013) 358 ITR 593(SC)

3. Whether on the facts and circumstances of the case, the CIT(A) was justified in law in holding that admission of additional income of Rs.1,80,00,000/- was not discernible from statements or from impounded material found during survey out of which Rs.1,50,00,000/- was offered as additional income during assessment did not represent specific item of unexplained/undisclosed income/investment/expenses not shown in regular books of account/return of income and was not backed by any incriminating material ignoring the direct evidence and material found during survey and accepted as unexplained by the Managing Director in his statement."

2. The assessee has raised cross-objections stating that the learned Assessing Officer has erred in law and on facts in levying the penalty u/s. 271(1)(c) on a non-specific notice initiating the penalty.

3. Brief facts of the case are that a survey u/s.133A was carried out on 25.07.2012 at the business premises of the assessee. During the course of survey, loose papers and other documents were found which were impounded and inventorized. The assessee was confronted with the documents so found and impounded. The assessee after being confronted with the documents, had given statements and the relevant portion of the statements given was as under :

प्र 10 आपको और कुछ कहना है।

उत्तर ..... मेरे यहा से प्राप्त हार्ड डिस्क व अन्य कागजो व मेरे दिये गये व्यान में जो भी चीजे मेरे मेरी पत्नी और मेरी पुत्री व पुत्र के वही खतों में दर्ज नही है उन समस्त अघोषित आय सम्पत्ति व कमियों के एवज में मै रूपये 1,80,00,000 घोषित करता हूँ और उस पर टेक्स देने को तैयार हूँ यह घोषणा मै अपनी मानसिक शांति के लिये घोषित कर रहा हूँ जिससे कि भविष्य में मेरे को विभाग से किसी भी प्रकार की परेशानी न हो जिसका आधा टेक्स वित्तीय वर्ष 2012–13 तथा आधा टैक्स वित्तीय वर्ष 2013–14 में जमा कर दूँगा । उपरोक्त आय मेरी नियमित आय के अतिरक्त होगी ।

4. Based on this statement, during the assessment proceedings, the assessee was asked to explain the source of income of Rs.1.50 crores, which was not shown by the

assessee during the assessment year 2013-14. In reply, the assessee has submitted as under :

> *".....That however, in spite of all these factual position supra, as discussed during the course of assessment proceedings, the amount ofRs.1,50,00,000/- (Rs.1,80,00,000 – Rs.30,00,000) as declared during the course of survey, is being hereby offered for taxation just to avoid avoidable litigation to buy peace and have a cooperation with the department with the condition that no penal action may kindly be taken under the Income Tax Act, 1961.*
>
> *It is submitted that the penalty u/s.271(1)(c) of the Act is not leviable for any income offered for taxation during course of assessment proceedings……."*

5. The Assessing Officer had completed the assessment on the basis of the reply given by the assessee and made addition of Rs.1,50,00,000/-. The Assessing Officer has also mentioned in the assessment order that penalty be initiated on the assessee u/s. 271(1)(c) of the Act.

6. The Assessing Officer had issued the notice for imposition of penalty vide notice dated 23.03.2016, 07.09.2016 and 20.09.2016. The scanned copies of the three notices are as under :

Dated 23/03/2016

To
M/s. Fairyland Hotels and Resorts Private Limited
A-225, Patel Nagar,
City Center,
Gwalior
Madhya Pradesh 474011

Sir/Madam,

Whereas in the course of proceedings before me for the Assessment year 2013-14, it appears that you have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are hereby requested to appear before me on 25/04/2016 at 11.30 AM and show cause why an order imposing a penalty on you should not be made under section 271(1)(c) of the Income Tax Act, 1961. If no one attends this office on the said date of hearing, the case shall be decided on the basis of material available on records.

Yours faithfully
DCIT/ACIT 1(1), GWL

Dated 07/09/2016

To
M/s. Fairyland Hotels and Resorts Private Limited
A-225, Patel Nagar,
City Center,
Gwalior, MP 474011

Sir/Madam,

Whereas in the course of proceedings before me for the Assessment year 2013-14, it appears that you have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are hereby requested to appear before me on 21/09/2016 at 11.30 AM and show cause why an order imposing a penalty on you should not be made under section 271(1)(c) of the Income Tax Act, 1961. If no one attends this office on the said date of hearing, the case shall be decided on the basis of material available on records.

Yours faithfully
(Yaduvansh Yadav)
Asstt. Commissioner of Income Tax,
Circle 1(1), Gwalior.

Dated 20/09/2016

To
M/s. Fairyland Hotels and Resorts Private Limited
A-225, Patel Nagar,
City Center,
Gwalior, MP 474011

Sir/Madam,

Whereas in the course of proceedings before me for the Assessment year 2013-14, it appears that you have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are hereby requested to appear before me on 23/09/2016 at 11.30 AM and show cause why an order imposing a penalty on you should not be made under section 271(1)(c) of the Income Tax Act, 1961. If no one attends this office on the said date of hearing, the case shall be decided on the basis of material available on records.

Yours faithfully
(R.K. Garhwal)
Asstt. Commissioner of Income Tax,
Circle 1(1), Gwalior."

7. The assessee after receipt of notices had filed reply on 10.03.2016. Relevant portion of the reply was also reproduced by the Assessing Officer in the penalty order as under :

> *".....That however, in spite of all these factual position supra, as discussed during the course of assessment proceedings, the amount ofRs.1,50,00,000/- (Rs.1,80,00,000 – Rs.30,00,000) as declared during the course of survey, is being hereby offered for taxation just to avoid avoidable litigation to buy peace and have a cooperation with the department with the condition that no penal action may kindly be taken under the Income Tax Act, 1961.*
>
> *It is submitted that the penalty u/s.271(1)(c) of the Act is not leviable for any income offered for taxation during course of assessment proceedings....."*

The Assessing Officer considered the reply of the assessee and after finding it not satisfactory, imposed penalty.

8. Assessee filed appeal before the CIT(A), feeling aggrieved by the penalty order. The ld. CIT(A) had deleted the penalty imposed by Assessing Officer vide impugned order.

9. The ld. DR for the Revenue had submitted that the deletion made by the ld. CIT(A) was without any basis. Ld. CIT(A) has failed to appreciate that in the present case, the statement given by the assessee was not voluntary, but was on account of the fact that the assessee was confronted with the specific documents which were duly inventorised, disclosing the escapement of income and other information . It was submitted that the disclosure was not voluntary, but was triggered on account

of the above noted facts, and due to this, the assessee accepted the undisclosed income in their statement and admittedly the income so disclosed was not earlier declared in the return of income for the assessment year under consideration by the Assessee . The ld. DR had submitted that the finding recorded by the ld.CIT(A) that no document, no cash no stock or incriminating material was found during the survey, was incorrect and is contrary to categorical finding recorded in the assessment order. The Assessing Officer has mentioned, in order that loose papers and other materials which were found, impounded and inventorised. She had also submitted that the judgment relied upon by the CIT(A) in the case of MAK Data vs. CIT, 38 taxman.com 448 (SC) was in fact fully applicable against the assessee and the decision of the Tribunal in the case of Arpana Tiwari vs. ITO and Uttam Value Steels Ltd vs. ACIT were on its own facts and cannot dilute the proposition laid down by Hon'ble Supreme Court.

10. Per contra, ld. AR supported the order passed by the ld.CIT(A) and had also submitted that the order passed by the CIT(A) was in accordance with law. The ld.AR has further submitted that the cross objection was filed by the assessee wherein it was submitted that the penalty order is required to be set aside not only on the ground mentioned by the CIT(A), but also on account of fact that all the three notices reproduced above were not specific on charge of penalty. He relied upon the decision of Hon'ble Karnataka High court in the case of CIT vs. Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar) and of Hon'ble Supreme Court in the case of SSA

Emrald Meadows, 73 Taxman 248 (SC). Further, it was submitted by the ld. AR that there was no material in possession of the Assessing Officer to confirm the addition and he relied upon the recent decision in the case of Basir Ahmed Sisodia vs. ITO [2020] 116 taxmann.com 375 (SC).

11. In rebuttal ld. DR ha submitted that no prejudice was caused to the assessee as the assessee had not only participated in the penalty proceedings, but was aware of the fact as is clear from the reply submitted by the assessee reproduced hereinabove. She had also relied upon the decision in the case of Sudhir Kumar Singh and others vs. State of UP (Civil Appeal No. 3498 of 2020) wherein in paragraph No. 39, it was held as under :

> *"39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasising that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason—perhaps because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing "would make no difference"—meaning that a hearing would not change the ultimate conclusion reached by the decision- maker—then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in Malloch v. Aberdeen Corpn. [(1971) 1 WLR 1578], who said that: (WLR p. 1595) "... A breach of procedure ... cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain." Relying on these comments, Brandon L.J. opined in Cinnamond v. British Airports Authority [(1980) 1 WLR 582] that: (WLR p. 593) "... no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing." In such situations, fair procedures appear to serve no purpose since the "right" result can be secured without according such treatment to the individual."*

12. She has also referred to the decision of Madras High Court in the matter of Sundaram Finance Lt. v. ACIT, 93 tamann.com 250 (Madras) and Sandeep Chandak, 93 taxman.com 405.

13. We have heard the rival contentions of the parties and perused the material before us including the judgments relied by both the parties. We'll first deal with the CO filed by the assessee whereby the assessee sought to support the order passed by the Commissioner (appeal) on the ground that the notices issued by the assessing officer were non-specific. In this regard, it would be relevant to record the facts of the present case. A survey was carried out in the premises of the assessee on 25th of July 2012 when during the survey loose papers and other materials were found, which were impounded and inventoried. The statement was also recorded and the assessee agreed to declare income of ₹ 1, 80, 00000/-as the documents were found in the hard disk which were not recorded in the books of account of the assessee, his daughters and son.(AO page 2)

14. The assessing officer noticed that the assessee had only surrendered ₹ 30.00 Lakhs instead of income of ₹ 1,80,00, 000/-. The assessee was asked by the assessing officer to furnish his explanation regarding non-surrender of amount of ₹ 1,50,00,000/-. After that the assessee filed a written reply on 10 March 2016 whereby he had agreed to declare the additional income of Rs 1,50,00,000/-.

15. In the penalty proceedings the notice was issued to the assessee and in response to the notice the assessee's counsel had stated that the amount of 1.5 crore was declared during the course of survey and was offered for taxation to avoid litigation and to buy peace. In our opinion there was no ambiguity in the mind of the assessee either at the assessment stage or at the stage of imposition of penalty that the assessee had not disclosed the income of ₹ 1.5 crore in the return of income, despite surrendering Rs.1,80,00,000/- during survey proceedings. The above said plea of non-specific notice was not raised by the assessee before the Commissioner (appeal). In our considered opinion the notice was issued to the assessee and the assessee had also filed the reply declaring the entire undisclosed amount in the return of income, as was surrendered on survey. The sum and substance of the submission was that the assessee was well aware of the charge against the assessee and the assessee was required to plead not only the plea of non-specific notice but is also required to raise the defense of prejudice caused to him on account of non-specific notice. In our considered opinion the assessee has not raised the plea of non-specific notice before the lower authorities and have further not raised the plea of prejudice caused to him on account of non-specific notice. Undoubtedly the judgement relied upon by the assessee in the matter of CIT vs. Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar) and of Hon'ble Supreme Court in the case of SSA Emrald Meadows, 73 Taxman 248 (SC), provides that in case of non-specific notice

the penalty proceedings are required to be dropped. However, honourable Supreme Court in a subsequent judgement in the matter of Sudhir Kumar Singh and others vs. State of UP (Civil Appeal No. 3498 of 2020), had the laid down that it is not only necessary for the assessee to raise the plea of violation of principle of natural justice but it is also necessary to prove and plead the prejudice caused to him on account of non-compliance of principle of natural justice as in the present case of non-specific notice. Nothing has been pleaded before us or before the lower authorities to prove the prejudice caused to the assessee on account of non-specific notice. In the light of the above we do not find any merit in the contention of the assessee and therefore the CO filed by the assessee is required to be dismissed as no prejudice had been caused to the assessee. Further we are also of the opinion that the charge against the assessee was known to the assessee and had filed the reply thereto setting up the plea of buying the peace and to curtail the litigation. However in the reply the assessee has not submitted that he was not aware of the charges for which the penalty notices were issued by the assessing officer.

16. Now coming to the finding of the Commissioner appeal challenged by the revenue. The Commissioner appeal had deleted the penalty by distinguishing the judgement of the honourable Supreme Court in the matter of Mak Data and relied upon the decision of Uttam Value Steels (supra). The SC in Mak Data had held as under :

> **9.** We are of the view that the surrender of income in this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in

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

17. In the matter of Samson Maritime Ltd.[2017] 88 taxmann.com 671 (Bombay) it was held as under :

8. The grievance of the appellant-assessee before us is that it had itself brought its mistake of debiting the loss on account of foreign exchange fluctuation to determine its Non-Tonnage income to the notice of the Assessing Officer. This, according to him, is stated in its Affidavit dated 23rd June, 2010 filed during the penalty proceedings before the Assessing Officer. However, the above affidavit as filed by the appellant during penal proceedings, has been ignored by all the authorities including the Tribunal while passing the impugned order. It is submitted that the above fact itself would justify dropping of any penal proceedings against appellant-assessee. It was also submitted before us that debiting of the foreign exchange loss to arrive its non-tonnage income, was a mistake and no penalty be imposed for the mistake committed. Reliance was placed upon the Apex Court's decision in *Price Waterhouse Coopers (P.) Ltd.* v. *CIT* [2012] 25 taxmann.com 400/211 Taxman 40/348 ITR 306 to contend that mistakes made by an assessee cannot be the basis for imposition of penalty. In the above view, it is submitted that the appeal be admitted.

9. From the record it is clear that the notice under Sections 142(1) and 143(2) of the Act were issued to the appellant on 14th January, 2009. The notice also contains an annexure, seeking details of expenses debited to Profit and Loss Account, along with details of foreign exchange expenses. Even according to the appellant, the alleged mistake on its part was pointed out by a letter dated 23rd September, 2009 during assessment proceedings where it stated that it had committed a mistake in debiting foreign exchange loss to its determine non-tonnage income, when in fact, no foreign exchange loss was involved in respect of its non-tonnage business. Thus, it is clear that so-called mistake as claimed by the appellant-assessee, was only after notices dated 14th January, 2009 were issued under Sections 142 and 143 of the Act. It was only an attempt to pre-empt the Revenue finding out the appellant had furnished inaccurate particulars. Therefore, it cannot be said that it was voluntary disclosure. In fact, the Apex Court in *MAKData (P.)*

Ltd. (*supra*) has observed that " The Assessing Officer, in our view, shall not be carried away by the plea of the Assessee like "voluntary disclosure", "buy peace", "avoid litigation" "amicable settlement" etc. to explain its conduct." The Apex Court has also further observed that "It is trite law that the voluntary disclosure does not release appellant-assessee from the mischief of penal proceedings. The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty." In the peculiar fact of the present case, the so-called voluntary disclosure was only after the Assessing Officer initiated proceedings under Section 142 of the Act. Thus, it was not a voluntary disclosure. In fact, the Assessment Order dated 24th December, 2009 under Section 143(3) of the Act also records the fact of verification by the Assessing Officer, leading to a finding that the appellant-assessee had debited foreign exchange loss to arrive its non-tonnage income. This order was accepted and no grievance in respect of the same being found by the Assessing Officer, was made by the appellant-assessee. It is only in penalty proceedings that this issue is raised for the first time. Further, the appellant-assessee besides stating it is a mistake, has not offered any explanation. Therefore, the explanation under Section 271(1)(c) of the Act was not found to be satisfactory by the authorities under the Act and penalty imposed and sustained.

10. Reliance placed by the appellant-assessee upon the decision of the Apex Court in *Price Waterhouse Coopers (P.) Ltd.* (*supra*), is inappropriate in the facts of the present case. In the above case, the Apex Court noted the fact that Tribunal had itself come to a finding that there was a silly mistake on the part of the assessee in not having added the provision for gratuity to its total income even when the documents accompanying the return of income, did show that provision for gratuity is not allowable as deduction under Section 40(7) of the Act. Thus, it was only a computation error in the return of income. In the present facts, none of the authorities including the Tribunal have found the debit of foreign exchange loss to its non-tonnage business was made on account of a mistake. Nor can it be classified as an computation error after complete disclosure. Thus, the aforesaid decision does not assist the appellant-assessee.

11. We note that all the three authorities have come to a finding of fact, adverse to the appellant, that the so-called voluntary disclosure was not voluntary, but made only in response to notices under Sections 142 and 143 of the Act. This finding of fact is not shown to be perverse and/or arbitrary, warranting interference. In view of the above, the question as framed does not give rise to any substantial question of law.

18 . In the matter of Gangotri Textiles Ltd.[2020] 121 taxmann.com 171 (Madras)

4. We have carefully perused the penalty order dated 25-9-2015 and we find that the Assessing Officer considered all the factual aspects raised by the assessee and rejected the same to be absolutely without bonafides. The decisions relied on by the assessee were also taken note of and each of the decisions was dealt with. The Assessing Officer placed reliance on the decision of the Hon'ble Supreme Court in MakData (P.) Ltd. (supra) and stated that voluntary disclosure does not release the assesee from mischief of penalty proceedings under section 271(1)(c) of the Act. Therefore, we find that the penalty order is a reasoned order.

15. The learned counsel had argued that the defect in the penalty notice is a question of law which can be raised by the assessee at any point of time. We have considered this submission and we have rejected it. The learned counsel relied on the decision of the Hon'ble Supreme Court in the case of K. Lubna to submit that if the factual foundation for a case has been laid and the legal consequences of the same having been examined, the examination of such legal consequences would be a pure question of law. We have noted the factual position. The assessee understood the notice to be under both heads, namely, furnishing of inaccurate particulars and concealment of income. This is evident from the assessee's reply dated 8-4-2015 to the show cause notice dated 12-3-2015. Therefore, the decision in the case of K. Lubna does not help the assessee, as there is no substantial question of law arising from such contention.

16. The learend counsel argued that the financial condition of the assessee Company was also a relevant factor to assess their bona fides. This contention cannot be accepted because the settled legal position is that penalty cannot be cancelled on the mere ground that return of income and assessed income was a loss. In the said decision, the Hon'ble Supreme Court had relied upon the decision in the case of CIT v. Gold Coin Health Food (P.) Ltd. [2008] 172 Taxman 386/304 ITR 308 wherein it was held that Explanation 4(a) to Section 271(1)(c)(iii) is intended to levy penalty not only in a case where after addition of concealed income, a loss returned, after assessment becomes positive income, but also in a case where addition of concealed income reduces the returned loss and finally the assessed income is also a loss or a minor figure. In this regard, it will be beneficial to refer to the decision in Union of India v. Dharmendra Textile Processors [2008] 174 Taxman 571/306 ITR 277(SC), which has been referred to and relied on in the case of N. G. Technologies Ltd.

17. As against the ecision in the case of Jivanlal and Sons, a Special Leave Petition filed against the decision of the High Court which confirmed the penalty order passed by the Tribunal rejecting the assessee's explanation that it had claimed deduction on wrong advice given by the Chartered Accountant was dismissed. The operative portion of the judgment of the High Court of Bombay in Jivanlal& Sons v. Asstt. CIT [2019] 103 taxmann.com 207 is as follows:

2. We are unable to agree for more than one reason. The assessee is a Firm. It was throughout being advised and represented by a Chartered Accountant. The Tribunal rightly proceeded on the basis that a Chartered Accountant is deemed to be aware of the law and its intricacies. Being a professional, he could not have committed a mistake as was attributed to him. The tax paid is undisputedly an inadmissible expenditure from the profits of the business. Hence this amount should have been statutorily added back. Further, from the computation of income, the assessee added back certain inadmissible expenditure. However, he excluded the amount of income tax paid to the extent of Rs. 48,90,114/-. Thus, the addition was only partial and not full. Unless and until the legal provision then in force permitted exclusion of the amount of income tax already paid, the Chartered Accountant could not have done this. The Chartered Accountant cannot feign ignorance of Section 40(ii) of the Income-tax Act as he is well trained and well versed in law representing not only the assessee, but various other clients. As far as the assessee'smalafide intention is concerned, the burden was entirely on the assessee to then show in terms of Explanation-I to the provision permitting imposition of penalty that such intention never existed when the above act was committed. For that, there was no material either in the form of evidence of the assessee or the affidavit of the Chartered

> Accountant. Hence the Commissioner was right, according to the Tribunal, in imposing this penalty. The attempt to blame the Chartered Accountant cannot result in the assessee's exoneration and claimed in absolute terms. In the circumstances, the penalty was rightly imposed.
>
> 18. Thus, for the above reasons, we find that the order passed by the Tribunal does not call for any interference and the Substantial Questions of law framed for consideration have to be answered against the assessee.

19. Similar views were expressed by the jurisdictional High Court in the matter of Sandeep Chandak (Supra). Therefore in our view the judgment relied upon by the assessee and CIT(A) were not applicable to the facts and circumstances of the case.

20. If we look into the facts of the present case, it is abundantly clear that the assessee had surrendered the income during the course of survey on 25 July 2012, however despite surrender the assessee had not disclosed the said income in the return of income for the assessment year 2013- 2014. In the assessment proceeding the assessee was show caused by the assessing officer and asked to explain the reasons for not surrendering the complete income. Thereafter the assessee in the written submission on 10 March 2016 had agreed to surrender the remaining amount and in the written submission it was submitted that the assessee is doing it only to avoid litigation and to buy peace.

20. In our considered opinion the initial surrender made by the assessee on 25 July 2012 was on account of the recovery of loose papers, hard disk and other documents showing the undisclosed income and investment made by the assessee, his daughter and son. It was not voluntary but it was on account of the recovery of the said documents made during survey. Further, from the conduct of the assessee,

it is clear that the surrender was lacking voluntariness. In our view the assessee was forced to disclose the income on account of survey and subsequent show cause notice issued by the assessing officer. In view of the above said we do not find any justification for the CIT(appeals) to delete the penalty . Hence the order passed by the CIT (appeals) is required to be annulled and the order of the assessing officer imposing the penalty is required to be confirmed. Accordingly we confirm the penalty imposed by the assessing officer.

21. In the result the appeal filed by the revenue is allowed and the CO filed by the assessee is dismissed.

Order pronounced in the open court on 09/03/2021.

Sd/-	Sd/-
(Dr. Mitha Lal Meena)	**(Laliet Kumar)**
Accountant Member	**Judicial member**

Dated: 09 March, 2021
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