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

श्री आर.पी.तोलानी, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI R.P. TOLANI, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 512/JP/2013
निर्धारण वर्ष/Assessment Year : 2006-07

M/s. Associated Stone Industries (Kotah) Ltd. Bazar No.1, Ramganj, Mandi Kota	बनाम Vs.	The ACIT Circle- 1 Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCA 3549 F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Harsh Bhuta , CA
राजस्व की ओर से/ Revenue by : Shri Rajinder Singh,, JCIT

सुनवाई की तारीख/ Date of Hearing : 15/12/2015
घोषणा की तारीख/ Date of Pronouncement : 08 /01/2016

आदेश/ ORDER

PER R.P. TOLANI, JM:-

The assessee has filed an appeal against the order of the ld. CIT(A), Kota dated 18-02-3013 for the assessment years 2006-07.

2.1 Sole ground raised by the assessee challenges imposition of penalty u/s. 271 (1) (c) of the Income – tax Act at Rs. 75 lacs confirmed by authorities below.

2.2 Brief facts are – Assessee i.e. Associated Stone Industries (Kotah) Ltd., was having Two Divisions viz; Mining Division and Textile Division (Prerna Syntex). Textile Division was demerged from A.S.I. (K)

Ltd. Due to some exigencies they were proposed to be demerged as per the Scheme of Arrangement, w.e.f. 16th October, 2005. The Scheme of Arrangement for de-merger was finally approved by Hon'ble Rajasthan High Court vide its order dated 09.02.2007. The assessee is governed by regulatory laws including The Companies Act, 1956, Income – tax Act, 1961 and other applicable laws in this behalf. It had two division engaged in distinct activities i.e. stone division and textile division. Regular books of accounts for both divisions duly are maintained and audited, there were no adverse observation in these reports. The assesse filed its return of income A.Y. 2006 – 2007 declaring a loss of Rs. (-) 6,44,82,042/- along with audited accounts as well as the tax audit reports. The enclosures clearly mentioned the facts about companies pending demerger and also the likely tax effect of pending demerger application before Hon'ble Rajasthan High Court. Before filing the return in electronic form for AY 2006-07 on 27.11.2006, vide its letter dated 24.11.2006, the assessee intimated ld. AO relevant details and the facts about the demerger in contemplation and intention to file a revised return as and when the demerger scheme was finally approved by the Hon'ble Rajasthan High Court. Further as a matter of abundant caution, assessee also filed the return of income in physical form on 30.11.2006, which

contained a covering letter of the same date enclosed with 152 pages notes and enclosure containing all the facts and necessary record in this behalf. The assessment for AY 2006-07 was accordingly framed u/s 143(3) on 31-12-2010 pending High Court order by making some disallowances. Subsequently, as soon as the Hon'ble Rajasthan High Court passed the final order on 09.02.2007 approving the scheme, the assessee again submitted a copy of the order and High Court approved scheme before the A.O., vide its letter dated 30.03.2007. Assessee again in its return of income for A.Y. 2007 – 2008 electronically filed on 31.10.2007 also, as an abundant caution filed relevant documents of demerger in physical form upon filing such e-return. On the same date, tax audit reports and accounts for that year, as well as computation of income for that year, in which, by way of a separate note, specifically bringing to the notice of ld. A.O. that in terms of the approval of the scheme by the Hon'ble High Court, all the carried forwarded losses have been treated as the losses of the resulting company. On the basis of High Court order approving demerger and it's effects filed by the assessee, ld. AO recorded following reasons and issued notice u/s 148 reopening the assessment for AY 2006-07:-

''Reasons for issue of Notice u/s 148

Assessment in the case of M/s. Vast Textiles Ltd., Neemrana for A.Y. 2006-07 was completed vide order u/s 143(3) dated 26-12-2008 by ACIT, Circle- 2, Alwar. It was informed by ACIT, Circle- 2 vide his letter dated 06-01-2009 that during the course of assessment proceedings it has been observed that M/s. Vast Textiles Ltd. has shown losses/unabsorbed depreciation etc. standing on account of Prerna Syntex on the ground that earlier to 16-10-2006 the said Prerna Syntex to be a unit of M/s. ASI which has been demerged therefrom and merged with Vast Textiles Ltd. In view of this fact M/s. Textiles Ltd. has revised its return from profit of Rs. 19,57,324/- to a loss of Rs. 8,47,06,864/-.

Thus, as a natural consequence of the demerger, M/s. Associated Stone Industries (Kotah) Ltd., PAN AACCA 3549F should have get away with the losses etc. pertaining to the demergd unit and should have revised its return accordingly. But, on verification of facts, it is found that M/s. Associated Stone Industries Ltd., Kota, PAN AACCA 3549F has not revised its return for the A.Y. 2006-07 and continued to set off its profit from the losses of the demerged unit, for which it was not entitled.

Considering the above facts, the summarized working of the total income of M/s. Associated Industries (Kotah) Ltd. for A.Y. 2006-07 is calculated as under:- (the calculation is mentioned at page 2 of the Reasons for issue of Notice u/s 148)……

From the above, it is noted that as against the returned loss of Rs. (-) 6,44,82,042/-for A.Y. 2006-07, the total income of M/s. ASI, (kotah) Ltd., should be Rs. 2,21,82,864/-. Thus, the income equal to the amount of Rs. 8,66,64,904/- has escaped assessment in the case of M/s. Associated Stone Industries (Kotah) Ltd., Kota (PAN AACCA 3549F)

Therefore, considering the above facts, I have reasons to believe that income of Rs. 8,66,64,904/- has escaped assessment in the A.Y. 2006-07 and thus it is a fit case for issue of notice u/s 148 of the I.T. Act, 1961.''

2.3 During the course of reassessment proceedings, ld. AO was of the view that from demerger order it emerged that assessee in original return has claimed the losses attributable to resulting company for which a revised return as undertaken has not been filed. The corresponding loss consequent to High Court demerger order Dtd. 9-2-2007 was reduced by ld. AO on following observations:-

> *''3.1 Loss related to Demerger: During the year under consideration, demerger of the company took place on 15-10-2005, as per order of Hon'ble Rajasthan High Court dated 9-02-2007. While company filed its return of income on 27-11-2006 at loss of Rs. 6,44,82,042/- . That loss also includes loss of resulting company. The loss related to resulting company cannot be claimed by the dmerged unit. Further, resulting company filed revised return of income and claimed the same losses.*
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> *At the same time, the assessee company has to reduce losses related to resulted company. However company did not file any revised return which shows that the assessee has taken undue benefit of the losses of the resulting company. In this regard, assessee was given show cause why losses pertaining to Textile Unit may not be disallowed. In response to that the assessee submitted on 27-12-2010 that :-*
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> > *"After submission of the factual position as above, we hereby inform your goodself that as we forgot to file the revised Income Tax Return for the Asstt. Year 2006-07, we hereby accept and agreed to buy the peace with the department that losses pertaining to Textile Division may be transferred to resulting company which could not been transferred at the time of filing of original return on or before due date in absence of the final approval of the Hon'ble High Court for Scheme of Arrangement of Demerger and we also agreed to pay net actual income tax on the total income of the mining division only. We have filed original Income tax return as per the circumstances*

and statute prevailing at that time filing of original return and thereafter, on approval of Scheme of Arrangement for Demerger by Hon'ble High Court, we have also not availed benefit of any set off during the next Assessment Year and onwards for the losses pertaining to Textile Division."

In this regard, it is relevant to mention here that as a natural consequence of the demerger, M/s. Associated Stone Industries (Kotah) Ltd., Kota (PAN AACCA 3549F) should have got away with the losses etc. pertaining to the demerged unit and should have revised its return accordingly. But, on verification of facts, it is found that M/s. Associated Stone Industries Ltd., Kota (PAN AACCA 3549F) has not revised its return for the A.Y. 2006-07 and constituted to set of its profit from the losses of the demerged unit, for which it was not entitled.''

2.4 As a result the originally assessed loss of Rs. 6,44,82,042/- u/s 143(3) vide assessment order dated. 31-12-2010 was converted into income of Rs. 2,21,82,042/- as a result of order Dtd. 31-12-2010 passed u/s 147. Ld. AO initiated penalty proceedings u/s 271(1)(c), the sum and substance of the assesse's reply is as under:-

1. As the Hon'ble High Court has not sanctioned the scheme of Arrangement of de-merger till the due date of filing of Income Tax Return for the Asstt. Year 2006-07, hence the company has filed its Income Tax Return at loss of Rs.64482042/- on 27.11.2006, electronically and physically with ACIT, Cir.-1, Kota on 30.11.2006, without considering the effect of de-merger. The copy of acknowledgement for submission of electronically generated acknowledgement, computation of total income with necessary notes regarding demerger, original tax audit report, Balance sheet and other relevant documents has submitted earlier vide our letter No.7948 dated 03.12.2010 during the assessment proceedings u/s 143(3).

2. As in electronic filing of Income tax return there is no clause in ITR to mention the above position, we have intimated about the demerger in detail to the Income Tax Department by way of note in Computation of Total Income and by way of separate letter dated 24.11.2006, submitted on dated 30.11.2006 mentioning that no effect has been given in the results for the year 2005-06 for the demerger in terms of the scheme due to pendency of the requisite sanction of the Hon'ble High Court for de-merger. The copy of Computation of Total Income alongwith notes and acknowledgement letter dated 24.11.2006 in respect of demerger was already submitted earlier with our letter No.7948 dated 03.12.2010 during the assessment proceedings u/s 143(3).

3. During the year 2005-06, three audited Balance sheets and Profit & Loss Account were prepared for Mining & Textile Division according to the requirement, the copy of Profit & Loss Account has already submitted earlier vide our letter No.7948 dated 03.12.2010 during the assessment proceedings u/s 143(3) and again enclosing as Annexure-F.

***4.** On receipt of the Hon'ble High Court order dated 09.02.2007, the company has also filed the copy of judgment alongwith Scheme of Arrangement of demrger vide letter No.15101 dated 30th March, 2007. Copy of acknowledgement letter has already submitted earlier vide our letter No.7948 dated 03.12.2010 during the assessment proceedings.*

5. In the Income Tax Return for the subsequent Asstt. Year 2007-08, assessee has not availed any benefit of the brought forward losses/unabsorbed depreciation carried forwarded from Asstt. Year 2006-07 as assessee knew that these losses related to Textile Division and it was mentioned in Tax Audit Report filed with you on 31.10.2007. The fact that assessee paid Income Tax of Rs.224.74 lacs for the Asstt. Year 2007-08 itself demonstrate clear bona fide intension for not to use or adjust any brought forward losses of Textile Division. The relevant pages of Tax Audit Report alongwith Acknowledgement letter and schedule of CYLA, BFLA & CFL of ITR showing that assessee has not taken set-off of losses pertaining to Textile Division was submitted vide letter No.7948 dated 03.12.2010 during the assessment proceedings.

6. *During the course of assessment proceedings u/s 147assessee agreed to pay tax on the income of mining division only with a following note submitted earlier on dated 27.12.2010.*

"After submission of the factual position as above, we hereby inform your goodself that as we forgot to file the revised Income Tax Return for the Asstt. Year 2006-07, we hereby accept and agreed to buy the peace with the department that losses pertaining to Textile Division may be transferred to resulting company which could not been transferred at the time of filing of original return on or before due date in absence of the final approval of the Hon'ble High Court for Scheme of Arrangement of Demerger and we also agreed to pay net actual income tax on the total income of the mining division only. We have filed original Income tax return as per the circumstances and statute prevailing at that time filing of original return and thereafter, on approval of Scheme of Arrangement for Demerger by Hon'ble High Court, we have also not availed benefit of any set off during the next Assessment Year and onwards for the losses pertaining to Textile Division."

We hereby further submit the in view of these facts and circumstances no penalty u/s 271 (1)(c) for concealment of particulars of income or furnishing of inaccurate particulars of such income be imposed in case of disallowances of losses pertaining Textile Division due to demerger effect.

7. According to section U/s 139(1) of the Income Tax Act, 1961, it is mandatory for every company to furnish a return of his income during the previous year on or before the due date in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.As demerger scheme was not sanctioned by the Hon'ble Rajasthan High Court before the due date of filing of Income tax return, and at the time of filing of return we could not assumed that whether High Court will sanction the demerger or not? and it was mandatory for us to file Income Tax Return before the due date as per the provision under section 139 (1) of Income Tax Act, 1961, hence we have

filed the original Income tax return timely by considering the income of textile division being a part of our income and without considering demerger effect. However, we have intimated about the same to the department alongwith the income tax return and computation of income and from time to time as mentioned in para 1 to 10 above. While filing of Income tax return we have neither concealed any income nor furnished any inaccurate particulars of such income, we have just filed the ITR based on the status of the company and the provision of Income Tax Act applicable at the time of filing of return. Therefore, our case is not the case of imposition of penalty u/s 271(1)(c).of the Income Tax Act.

12. ***Explanation 1 of 271(1)(c)*** *- Where in respect of any facts material to the computation of the total income of any person under this Act, -*

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

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.

For the application of clause (B) to explanation 1, the following three conditions must cumulatively be satisfied:

(1) The assessee fails to substantiate the explanation offered by it and

(2) The assessee fails to prove that such explanation is bona fide and

(3) The assessee fails to disclose all the facts relating to the same and material to the computation of his total income.

(2) Kanbay Software India Ltd. vs Dy. CIT 22 DTR 481 (Pune)]

As long as the information given in the income tax return is correct and complete to the best of assessee's knowledge and belief, it cannot be said

that the statutory obligation under section 139(1) is contravened which, even for a civil liability for penalty being imposed, is a sine qua non.

Therefore, in these facts and circumstances assesse was not liable imposition of penalty u/s 271(1)(c).of the Income Tax Act.

For the application of clause (B) to explanation 1to sec. 271(1)(c), the following three conditions must cumulatively be satisfied:
(1) The assessee fails to substantiate the explanation offered by it and
(2) The assessee fails to prove that such explanation is bona fide and
(3) The assessee fails to disclose all the facts relating to the same and material to the computation of his total income.

The Madras High Court, in A.V. Thomas & Co. (India) Ltd v. CIT (1966) 59 ITR 499 (Mad) analysed the implications of word conceal that it pertains to an affirmative action likely to prevent or intended to prevent knowledge of a fact. Secrecy is an essential ingredient of the act of concealment. To constitute "concealment", it must appear that the statement or act of the person was calculated and designed to prevent discovery of the act with which he is charged. His act must be misleading, false or deceptive."

The Madras High Court, in A.V. Thomas & Co. (India) Ltd v. CIT (1966) 59 ITR 499 (Mad) analysed that when particulars of income furnished in the return of income are not correct resulting in understatement of income, it may be a case of inaccurate particulars of income.

In furnishing its return of income, as assessee is required to furnish particulars and accounts on which such returned income has been arrived at. Any inaccuracy made in such books of account or otherwise which results in keeping off or hiding a portion of its income is punishable as furnishing inaccurate particulars of its income – CIT v. Indian Metals & Ferro Alloys Ltd. (1994) 117 CTR (Ori.) 378.

The expression 'concealment of income' implies that an income is being hidden, camouflaged or covered up so as it cannot be seen, found, observed or discovered. The expression 'furnishing of inaccurate particulars of income' implies furnishing of details of

information about income which are not in conformity with the facts or truth. It does not extend to subjective areas such as the taxability of income, admissibility of a deduction and interpretation of law. The making of an incorrect claim does not amount to furnishing inaccurate particulars.

Both the expression and 'concealment of income' and "furnishing of inaccurate particulars" indicate some deliberation on the part of the assess, though the word "deliberately" and the word willfully are no longer part of statute. Mere omission or negligence would not constitute a deliberate act of suppressiio veri or suggestio falsi - Dilip N. Shroff v. Joint CIT (2007) 291 ITR 519 (SC) and T. Ashok Pai v. CIT (2007) 292 ITR 11 (SC).

Looking at the entirety of facts it emerges that:

- *The Textile Division has been demerged as per Scheme of Arrangement w.e.f. 16.10.2005 but the scheme of arrangement of demerger was approved by High Court on dated 09.02.2007.*

- *In absence of sanction from High Court for demerger, audited Balance Sheet and Profit & Loss Account for the year 2005-06, was prepared on dated 15.06.2006, without considering the effect of demerger of textile division and put up a note in Notes to the Accounts of statutory Audit report to that effect.*

- *In absence of sanction from High Court for demerger before the due date of filing of Income tax return, It can not be presumed that whether Demerger Scheme will be sanction by the High Court or not or will be sanction with or without the any change.*

- *Due to mandatory provision for filing of Income Tax Return before the due date as per the provision under section 139 (1) of Income Tax Act, 1961, hence we have filed the Income tax return timely by considering the income of textile division being a part of our income and without considering demerger effect.*

- *Assessee duly intimated to the department about the inclusion of income of textile division alongwith the reason for the same at the time of filing of income tax return and computation of income and by way of separate letter from time to time. We have disclosed all the facts relating to not considering the demerger in the computation of total income.*

- *While filing of Income tax return assessee neither concealed any income nor furnished any inaccurate particulars of such income, we have just filed the ITR based on the status of the company and the provision of Income Tax Act applicable at the time of filing of return.*

- *The intension of the company was bona fide and not to avail any brought forward losses pertaining to the Textile Division and accordingly after passing the High Court order the company itself has not claimed any brought forward losses pertaining to Textile Division in next Assessment year.*

Assessee's case is not a fit case for imposition of penalty u/s 271(1)(c).as:

Reliance was placed on following judgments :

It may be noted that if the party is guilty of contumacious or dishonest conduct, it would be legitimate to invoke the penalty provision. If the totality of the facts and circumstances disclose sufficient cause or reflects a bona fide belief on the part of the offender in the matter of the commission of the breach of the provisions of the Act, then a liberal attitude towards the assessee is necessary. In CWT v. Kumari Kavitha Goenka (1979) 119 ITR 974, 978-9 (Mad.)

No penalty unless there is a deliberate attempt: Mere omission on part of assessee does not amount to concealment and if no supportive evidence are available to prove that it was a deliberate attempt on part of the assessee, it was held that no penalty under section 271(1)© of the act is leviable. {CIT v. Ashim Kumar Agarwal (2005) 275 ITR 48 (Jharkhand)}.

The Delhi High Court in the case of CIT v. Rahuljee and Co. 250 ITR 225 (Del.) held athat if the explanation given by the assessee was bona fide, penalty u/s 271(1)(c) will not be attracted.

No penalty if the facts of the transaction are disclosed: If the assessee has claimed any exemption after disclosing the relevant basic facts of the transaction of the income and under ignorance of the provisions of the Act of 1961 has not offered that amount of tax, in such cases, penalty should not be imposed. In such cases rather it is the duty of the Assessing Officer to ask for further details and tax the income if it is liable to tax. In the instant case, the assessee had shown "long-term capital gain" and claimed exemption, but the transaction had been disclosed in the return. There was no concealment of income and penalty could not be imposed, {Chandrapal Bagga v. Income-tax Appellate Tribunal (2003) 261 ITR 67 (Raj.)}.

Recently the Supreme Court in the case of Union of India v. M/s Rajasthan Spinning & Weaving Mills (2009) 224 CTR 1 (SC) held in the context of section 11AC of the Excise Act which is similar to sec. 271(1((c) – The view taken in Dharmendra Textiles has been questioned by observing that "we fail to see that how the decision of Dharmendra Textiles can be said to be hold u/s 11 C would apply to every case of nonpayment or short payment of duty regardless of conditions exclusively mentioned in the section for its application."

- *The Mumbai Tribunal in its another decision on 20.03.2009 in the case of VIP Industries v. ACIT 21 DTR Mum Tri 153 : AIT-2009-122-ITAT, has held that mere confirmation of addition in quantum proceedings cannot, perse, lead to confirmation of levy of penalty. The Dharmendra Textile Division is confined to conclude that mens era is not essential for invoking penalty provisions. The intention of the Supreme Court is to cover those cases where the assessee earns income but unintentionally or inadvertently fails to disclose this in the return of income. The Supreme Court has not held that in all cases where the addition is confirmed, the penalty shall mechanically follow.*

- ITAT Pune Bench in the case of Kanbay Software v. DCIT 122 TTJ 721 (Pune) after considering the Supreme Court decision of Dharmendra Textiles held as under:-

- *An assessee's statutory obligation u/s 139(1) is to give correct and complete information with the return of icome. If this is complied with then there is no contravention which can attract even a civil liability. The fact that additions and disallowance are made by the A.O. does not mean that there is a breach of obligation. The proposition that just because penalty u/s 271(1)(c) is a civil liability, it must mean the penalty can automatically be levied on the basis of any addition to income, is not correct.*

- *Dharmendra Textiles is no more an authority for the proposition that penalty is an automatic consequence of an addition being made to the income of the taxpayer for the reason that whether it is a civil liability or a criminal liability, penalty can only come into play when the conditions are satisfied. Even Explanation 1 to section 271(1)(c) raises a rebuttable presumption and shifts the onus on the assessee to establish the bonafides of the claim;*

1. *The penalty u/s 271(1)(c) can be imposed for concealment of income committed at the time of filing of original Income Tax Return and as per the law on the date of filing of return.*

   Whereas the penalty u/s 271(1)(c) cannot be imposed in our case as demerger scheme was not sanctioned by the Hon'ble Rajasthan High Court before the due date of filing of Income tax return, and at the time of filing of return we could not assumed that whether High Court will sanction the demerger or not? and it was mandatory for us to file Income Tax Return before the due date as per the provision under section 139 (1) of Income Tax Act, 1961, hence we have filed the original Income tax return timely by considering the income of textile division being a part of our income and without considering demerger effect with necessary disclosure of facts. We have filed the Income Tax Return based on the status of the company and the provision of Income Tax Act applicable at the time of filing of original return. Therefore, we have not concealed the income or have furnished inaccurate particulars of income while filing the original income tax return.

The law applicable is law as it stood on the date of filing of the return and not on the date of passing the penalty order - Jain Bros. V. Union of India (1970) 77 ITR 107 (SC).

The Supreme Court in the case of Hindustan Steel Ltd. v. State of Orissa (1972) 83 ITR 26 (SC) has held that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or guilty of conduct, contumacious or dishonest, or acted in conscious disregard to its obligation. Penalty will also not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

Mere technical breach should not ordinarily attract penalty: Penalty will not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose the penalty will be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. (CIT v Harsiddh Construction Pvt. Ltd. (2000) 244 ITR 417 (Guj.)).

2. *It has not been disputed by lower authorities that assessee was not intimated by the resulting company that they have filed Revised Income Tax return after the demerger effect and also our Manager (Accounts) inadvertently forgot to file the revised Income Tax Return. Therefore, during the assessment proceedings we have accepted and agreed to buy the peace with the department that the losses pertaining to Textile Division may be transferred to the resulting company which*

could not be transferred at the time of filing of original return on or before due date in absence of final approval of Hon'ble High Court for Scheme of Arrangement of demerger. Thereafter, on approval of Scheme of Arrangement for Demerger by Hon'ble High Court, we have also not availed benefit of any set off during the next Assessment Year and onwards for the losses pertaining to Textile Division."

*CIT vs. Reliance Petroproducts (Supreme Court) : It has been held that **p**enalty U/s 271(1)(c) is not mandatory penalty its to be levied only when concealment of income and inaccurate furnishing of particulars are proved. We want to cite here a very important recent judgement of the Hon'ble Supreme Court wherein it has been decided that merely making a not sustainable claim in law does not lead to furnishing incorrect particulars.*

The argument of the revenue that "submitting an incorrect claim for expenditure would amount to giving inaccurate particulars of such income" is not correct. By no stretch of imagination can the making of an incorrect claim in law tantamount to furnishing inaccurate particulars. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. If the contention of the Revenue is accepted then in case of every return where the claim made is not accepted by the A.O. for any reason, the assessee will invite penalty u/s 271(1)(c). That is clearly not the intention of the Legislature. Further reliance is placed on:

J.K. Jajoo Vs. CIT (1980) 181 ITR 410 (MP) 083 CTR (MP) 041 : Held from the mere fact that a claim for certain expenditure is rejected it cannot be held; that the claim for expenditure made by the assessee was false or inaccurate to his knowledge or was as a result of gross negligence. Therefore the tribunal was not justified in holding the assessee was guilty of concealing the particulars of his income and was liable to pay penalty under provisions of 271(1)(c).

CIT v. Rose Lock Factory (1993) 117 Taxman 366 (Guj.): No penalty merely because of disallowance of certain expenses bona fide claimed by assessee

Gruh Finance Ltd v. ACIT 316 ITR (AT) 440 (Ahd.): Disallowance of deduction claimed by the assessee where true and full disclosure was made, does not amount to concealment.

Jhavar Properties P. Ltd v. ACIT (2009) 317 ITR (AT) 278 (Mum.): Disallowance on the ground of resonableness of expenditure does not amount to concealment.

CIT v. Cafco Syndicate Shipping Co. (2007) 294 ITR 134 (Mad.): Mere addition of income by disallowing expenses is not concealment of income -

2.5 Ld. AO, however did not accept the reply of the assesse and imposed the impugned penalty by following observations:

> *''Submission of assessee has been considered however, it is not acceptable in view of following discussion. Assessee relied upon various decisions of Hon'ble Courts, however, the case of assessee is totally different. In this particular case assessee had to revise its return of income after decision of demerger. However, company did not revised return of income , besides company took undue benefit of losses. These looses related to resulting company reduced taxable income of the company. Further claim of company, that resulting company did not inform after revising return of income, is not relevant. Because it is legal duty of the company to furnish correct position of income, whether the resulting company informed or not about claim of losses shows that company deliberately concealed true income, therefore, penalty is inevitable in this case on the issue of loss related to demerger, further assessee company said that company claimed loss only for the relevant year, in the next year company reduced loss of resulting company, however it is relevant to say that in the next year company not offered any additional tax on account of losses claimed in assessment year 2006-07. If company did not claim losses of resulting company then company had to pay tax on Rs. 2,21,82,864/-, it makes clear that company concealed income and filed inaccurate particulars of income.*
>
> *Further, it is also pertinent to mention that assessee has not filed any appeal in this regard. In this particular case company accepted that demerged unit could not claim loss related to resulting company. Company submitted that in the return of income for the A.Y. 2007-08, company neither concealed income nor filed inaccurate particulars of income, however, it is worthwhile to mention that on the date of notice, isued u/s 148, assessee was liable to file*

revised return, however, company did not file revised return of income. It shows that if reassessment was not done in the case of assessee, company never pay tax on loss related to resulting company. In this case, it is very clear that assessee hide true particulars of income. Hence, explanation of the assessee is neither bona fide nor reliable. Further, in view of the Explanation deeming concealment, the assessee has a duty to offer an explanation. However, where an explanation was offered and found to be unreliable, penalty becomes exigible.

Also, it has been held in the case of [CIT vs. Shree Krishna Trading Co., (2002) 253 ITR 645, 649 (Kerala High Court)] that after introduction of Explanation 1 conscious concealment need not be established. It is also held in the case of Union of India vs. Dharmendra Textile Processors (2008) Taxman 65 (SC). Penalty u/s 271(1) (c) is civil liability and for attracting such civil liability, willful concealment is not an essential ingredient.

Also, it is held that in the case of Raghuveer Soni vs. ACIT (2002) 258 ITR 239 by Rajasthan High Court that if in addition to failure to substantiate the explanation, the assessee also fails to prove that the explanation furnished by him was bona fide and that he has disclosed all material facts necessary for assessment then Explanation 1 to Section 271(1)(c) operates.

Looking to the above facts and circumstances of the case, it is held that assessee has filed inaccurate particulars of income and has concealed its income of Rs. 2,21,82,864/-. Therefore, penalty u/s 271(1)(c) is imposed upon the assessee and calculation of the penalty is made as under:-

Tax Chargeable on income in respect of which particulars of which have been concealed	*Rs. 2182864/-*
Minimum penalty leviable @ 100% of tax evaded	*Rs. 7466752/-*
Maximum penalty leviable @ 300% of tax evaded	*Rs. 22400256/-''*

2.6 Aggrieved assessee preferred 1st appeal challenging the imposition of penalty and contended that:

There has been complete and full disclosure of all relevant facts and documents by the assessee, even before the assessment was taken up for scrutiny. The most important aspect of the entire matter is that it is not even the case of the A.O. that the return of income filed by the

assessee for A.Y. 2006 – 2007 – which has to be the sole basis for evaluating this penalty provision – contained or depicted concealment of income or inaccurate particular. The most crucial aspect of the matter is that the law in this regard is very well established to the effect that the charge of concealment / filing of inaccurate particulars is always vis – a – vis the return of income filed; nothing more, nothing less. In other words, the only document which one needs to evaluate for this purpose is the return of income. The assessee should have concealed the income / filed inaccurate particular of income vis – a – vis the return of income filed by him. Any subsequent conduct of an assessee cannot change the position in this regard. Just as any act on the part of the assessee post filing of his return of income – whether by way of surrender of income or otherwise – does not absolve him from the charge of this penalty if, in the return of income filed, he had concealed income / filed inaccurate particular of income, similarly, an act of omission on the part of the assessee post filing of his return of income does not, by itself, attract this penalty if the return of income filed by him did not contain concealment / inaccurate particulars. To reiterate, it is undisputed that the return of income filed by the assessee on 27.11.2006 was a perfectly valid and correct return and did not contain any concealment / inaccurate particulars. It is nobody's case that the return of income would have or should have been otherwise. In the circumstances, it is clear that there was no concealment / filing of inaccurate particulars vis – a – vis the return of income so filed.

Another important aspect is that neither any fact has been found to be untrue nor A.O. has discovered any new fact. In other words, the penalty has been levied on the basis of the facts which were brought on

record by assessee only, before even the assessment or reassessment proceedings were initiated.

The facts clearly depict that there was neither any attempt nor intention to conceal any income or file any inaccurate particular of income but even on the basis of the circumstantial evidences as well as taking into account preponderance of probability, human conduct or surrounding circumstances., there could not have been any iota or semblance of intention to do so.

Moreover, the assessee has not taken any undue advantage of its omission, as it had not claimed any set off of such losses in the subsequent year i.e A.Y. 2007 – 2008 and also it had paid taxes. This negates any probability of the intention to conceal income / file inaccurate particulars of income. Even after initiation of the assessment proceeding, the assessee again put all the facts on record in details. The assessee also gave reasons / explanation for non-filing of a revised return due to inadvertence. Upon realizing the unintentional omission, the assessee readily and immediately accepted the mistake. The explanation of the assessee is supported by host of direct and circumstantial evidences, conduct and preponderance of probabilities. By furnishing a corroborative explanation assessee discharged its primary onus and substantiated the explanation about its bona fides. Ld. A.O. has not brought on any record any inquiries, facts or circumstances much less cogent evidence, to rebut that the explanation was false. Penalty has not been levied by considering the reply but only on technical consideration that revised return was not filed, ignoring the glaring facts that everything

was on record filed by none other than the assessee himself. Reliance was placed on:

Ms. Madhushree Gupta vs. Union of India 317 ITR 107 (Del)]

CIT vs. Rampur Engineering Co. Ltd. 309 ITR 143 (Delhi)(FB)]

CIT vs. Ram Commercial Enterprises Ltd. 246 ITR 568 (Del)]

Global Green Co. Limited vs. DCIT {I.T.A 1390/Del/2011]

It is undisputed that on the date of filing the return, the assessee had completely and accurately disclosed all the particulars of its income. Addl. CIT v. Prem Chand Garg 24 DTR 513 (TM) (DelhivTrib)]

(i) The assessee has offered all the necessary explanations with substantive evidence before the A.O. from time to time, the veracity of which have not been doubted. The sole contention of the A.O. is that the assessee failed to file a revised return. This, by itself, cannot lead to imposition of penalty.

(ii) The return of income filed by the assessee was bona fide and true on the date of filing the return

Reliance was placed on:

PWC Pvt. Ltd. vs. CIT [(2012) 348 ITR 306 (SC)]

CIT v/s. Reliance Petroproducts P. Ltd. [(2010) 322 ITR 158 (SC)]

T. Ashok Pai v/s. CIT [(2007) 292 ITR 11 (SC)]

Mahadeswara Movies vs. CIT (1983) [144 ITR 127 (KAR)]}

(iii) The assessee had disclosed all the material information relating to the computation of income. Further, there is no independent finding on the part of the AO. In fact, he has

relied completely on the disclosures made by the assessee in its return and submissions.

2.7 Ld. CIT(A) however confirmed the penalty by following observations:

> ‘’I have considered the findings of AO and assessee's submission. The assessee mainly relied on the fact that it has disclosed all the material fact before the AO.
>
> The basic facts are as under:-
>
> (i) The assessee filed its return of income on 30-11-2006.
>
> (ii) The assessee filed petition before the Hon'ble High Court for demerger of company into two companies namely M/s. Associated Stone Industries (Kotah), Ltd. and M/s. Vast Textiles Ltd. The scheme was to become effective from 16-10-2005.
>
> (iii) The Hon'ble High Court of Rajasthan approved the scheme vide its order dated 09-02-2007.
>
> (iv) The assessee had time to file revised return till 31-03-2008. However, no revised return was filed.
>
> (v) The assessee informed the AO on 31-1-2006 that as soon as the scheme of demerger was approved it would file revised return. However, no revised return was filed.
>
> (vi) The assessee submitted a copy of letter intimating the A.O. alongwith copy of order of Hon’ble High Court of Rajasthan, approving the scheme of demerger.
>
> vii). The assessee filed return for A.Y. 2007-08 on 31.10.2007 without claiming cany forward losses.
>
> The assessee claimed before me that assessee has all along kept on informing the A.O about various developments and has also not claimed carry forward of losses in A.Y 2007-08,

which showed its bonafide. The assessee also claimed that as all the material facts were disclosed and as there is no defect in the original return, the assessee cannot be treated as an assessee who has concealed particulars of income or concealed its income.

The facts of the case requires a different approach as this is not a simple case where we can decide the issue on the basis of original return itself. This is a case of demerger and as soon as the scheme is approved by the Hon'ble High Court, the assessee was required to complete various formalities before various authorities e.g. Registrar of Companies etc. The assessee was also required to prepare demerged accounts, therefore, it can be reasonably concluded that the issue of cany forward of losses must have come to its knowledge again and again.

The demerged entity M/s Vast Textile Ltd. also filed revised return and claimed cariy forward of losses.

Under these circumstances, the least, which the assessee could have done was to file a revised return but it appears that the assessee never had any intention of filing revised return but its intention was all along to create evidence to escape penalty u/s 271(lj(e).[in case it was caught] and not to pay taxes by filing revised return.
In my opinion, the assessee has deliberately avoided filing of revised return and payment of taxes, and therefore its a fit case for levy of penalty u/s 271(l)(c) of the I.T. Act. The penalty of Rs. 75,00,000/ (roughly 100% of tax sought to be evaded) is confirmed.

The assessee also raised the issue of recording ''satisfaction'' before initiating penalty proceeding. In view of sec 271(1)(B), mere issuance of direction to initiate penalty is sufficient to constitute satisfaction so, this issue also goes against assessee.

This ground of appeal is therefore dismsised.''

2.8 Aggrieved assessee is before us. Ld. Counsel for the assessee contends that:

1. It is nowhere disputed by the ld. AO that all the relevant details about demerger scheme, its pendency and subsequently its order, everything was filed by assessee itself before ld. AO. There is no reason whatsoever that assessee concealed anything or furnished inaccurate particulars of income. Relevant details were filed in physical form as well as notes in e return wherever possible for the assesse. Thus there is no issue on the undisputed facts that assessee made complete and full disclosure of all relevant facts, circumstances and documents even before the assessment was taken up for scrutiny.
2. The entire basis for imposition of penalty hinges on one aspect that assesse did not file the revised return; this is without disputing the most crucial aspect that the entire disclosure was made at the time of filing the application for demerger, returns of income for AYs 2006-07 & 07-08, after the approval of demerger scheme by High Court. It is not even the case of the A.O. that the return of income filed by the assessee for A.Y. 2006 – 2007 which has to be the sole basis for considering the applicability of penalty provision – contained or depicted even an iota of concealment of income or furnishing any inaccurate particulars.
3. It is a fundamental requirement of law that allegation about concealment penalty or imposition thereof and filing of inaccurate particulars is always related to the particulars disclosed along with return of income filed by assesse. It has been hold so by various Hon'ble Courts by way of plethora of judgments. In other words, for levy of penalty it should be demonstrated by ld. AO that assessee in the return of income filed by it has either concealed the

income or filed inaccurate particulars of income in the return of income. If the particulars of income in the return of income are proper under no circumstances penalty can be imposed u/s 271(1)(c). Ld. AO has adopted an extreme step by holding non filing of revised return as tantamount to concealment or filing inaccurate particulars. The action is unjustified since al the relevant details have been filed during the assessment proceedings.

4. Any subsequent conduct, post assessment proceedings or omission on the part of the assessee cannot, attract concealment penalty, if all the relevant facts, information and record is supplied by the assesse in returns of income for AYS 2006-07, 07-08. Besides when the scheme is approved by High Court the representative of the income tax department is also heard. Thus the entire proceedings related to demerger scheme were in public domain, within the knowledge of the department by way of copious quantity of documents which were filed not on one occasion but several occasions.

5. The allegation of concealment or inaccurate particulars has not been proved on the basis of any further inquiry, discovery of any new fact or information but only on for no filing of revised on facts which are already disclosed to department by the assessee. For this purpose, what has been relied on, is nothing but the record and submissions made by the asssessee itself.

6. The undisputed facts clearly demonstrate that there was neither effort nor any intention to conceal any income or file any inaccurate particular of income taking into account preponderance

of probability, human conduct, surrounding circumstances or reasonable logic.

7. More importantly, it is nowhere alleged that assessee has taken any undue advantage as it has not claimed any set off of such losses in the subsequent year i.e A.Y. 2007 – 2008. Since the assesse desired to close the issues it has paid all the due tax demand in this behalf. Thus there is no loss whatsoever to revenue and out right negates any suspicion that assessee concealed any income or filed inaccurate particulars of income in the return.

8. After initiation of the reassessment proceeding, the assessee again furnished all the relevant facts on record in details, submissions and case laws. The revised return could not be filed by the assesse due to an unintentional omission. There is no provision in the IT Act for levying concealment of income u/s 271(1)(c) for non-filing of return. The relevant provision is sec. 271(1)(a), which is neither initiated nor attracted. Thus the penalty has been imposed for not filing a return and unfounded allegation that assessee filed inaccurate particulars in return of income dtd. 27-11-06 is baseless as all the details about pending demerger application were furnished and mentioned. There can be no mistake in this return as the demerger was not approved by the time of filing of return or the assessment. Having offered a satisfactory explanation in this behalf, assessee had discharged its primary onus to submit an explanation which is corroborated by undisputed facts and substantiated by record about its truthfulness. Per contra ld. A.O. has overlooked the record, court orders and evidence and on an excuse that revised return was not filed by the assesse, arbitrarily

imposed the penalty. The penalty is imposed qua original return dtd. 27-11-2006 which remains accepted on this issue and when even the scheme was not approved and all the due disclosure was made in the proceedings time and again.

9. A legal plea is also taken that proper satisfaction has not been recorded by ld. AO in while initiating the penalty proceedings as in terms of section 271 (1) (c):

(i) Neither assessment order nor the show cause notice mentioned as to with respect to what item of addition / disallowance the penalty proceedings were initiated.

(ii) There was no proper recording of "satisfaction", within the meaning of section 271 (1) (c) and as laid down by courts.

(iii) There is vagueness of the charge, as it was not clear whether the charge was for concealment of income or for filing of inaccurate particulars. Both the charges are different and have different legal connotations.

Reliance was placed on:

Ms. Madhushree Gupta vs. Union of India [(2009) 317 ITR 107 (Del)]

CIT vs. Rampur Engineering Co. Ltd. [(2009) 309 ITR 143 (Delhi)(FB)]

CIT vs. Ram Commercial Enterprises Ltd. [(2000) 246 ITR 568 (Del)]

Global Green Co. Limited vs. DCIT {I.T.A 1390/Del/2011][ITAT Del]}

<u>No "concealment" / "filing of inaccurate particulars"</u>

(iv) It is undisputed that on the date of filing the return, the assessee had completely and accurately disclosed all the particulars of its income.

Addl. CIT v. Prem Chand Garg [(2009) 24 DTR 513 (TM) (Delhi)

The assessee has offered all the necessary explanations with substantive evidence before the A.O. from time to time, the veracity of which have not been doubted. The sole contention of the A.O. is that the assessee failed to file a revised return. This, by itself, cannot lead to imposition of penalty.

(v) The return of income filed by the assessee was bona fide and true on the date of filing the return

Further reliance was placed on:

PWC Pvt. Ltd. vs. CIT [(2012) 348 ITR 306 (SC)]

CIT v/s. Reliance Petroproducts P. Ltd. [(2010) 322 ITR 158 (SC)]

T. Ashok Pai v/s. CIT [(2007) 292 ITR 11 (SC)]

Mahadeswara Movies vs. CIT (1983) [144 ITR 127 (KAR)]}

(vi) The assessee had disclosed all the material information relating to the computation of income. Further, there is no independent finding on the part of the AO. In fact, he has relied completely on the disclosures made by the assessee in its return and submissions.

(vii) Reliance was placed on:

Dilip N. Shroff V/S. JT. CIT [(2007) 291 ITR 519 (SC)]

Kanbay Software India (P) Ltd. vs Dy. CIT 22 DTR 481 (Pune)

<u>No “satisfaction” within the meaning of section 271 (1) (c)</u>

Ms. Madhushree Gupta vs. Union of India 317 ITR 107 (Del)

In this case, the constitutional validity of section 271(1B) was challenged. The High Court, while upholding constitutional validity, held that the position of law both, pre and post amendment whereby section 271(1B) was inserted with retrospective effect from 1-4-1989, is similar, inasmuch as Assessing Officer will have to arrive at a prima facie satisfaction during course of assessment proceedings with regard to assessee having concealed particulars of income or furnished inaccurate particulars before he initiates penalty proceedings. The Court further held that the satisfaction of Assessing Officer that case may deserve imposition of penalty should be discernible from order passed during course of assessment proceedings.

CIT vs.Rampur Engineering Co. Ltd. 309 ITR 143 (Delhi)(FB)]

The High Court held that the power to impose penalty under section 271 of the Act depends upon the satisfaction of the Income-tax Officer in the course of the proceedings under the Act. It cannot be exercised if he is not satisfied and has not recorded his satisfaction about the existence of the conditions specified in clauses (a), (b) and (c) before the proceedings are concluded. Mere absence of words 'I am satisfied' in assessment order may not be fatal, yet such a satisfaction must be spelt out from order of Assessing Officer as to concealment of income or deliberately

furnishing of inaccurate particulars and in absence of a clear finding as to concealment of income or deliberately furnishing of inaccurate particulars, initiation of penalty proceedings u/s 271(1)(c) would be withoutjurisdiction.

CIT vs. Dajibhai Kanjibhai [1991] 189 ITR 41 (Bom)
CIT vs. Vikas Promoters Ltd. [2005] 277 ITR 337 (Del)
CIT vs. Ram Commercial Enterprises Ltd. 246 ITR 568 (Del)

The High Court held that merely because the penalty proceedings have been initiated, it cannot be assumed that such a satisfaction was arrived at in the absence of the same being spelt out by the order of the assessing authority. Where the assessment order did not record the satisfaction as warranted by section 271 for initiating the penalty proceedings, penalty cannot be held to be sustainable.

Global Green Co. Limited vs. DCIT [I.T.A 1390/Del/2011][ITAT Del]

The Tribunal held that despite the insertion of sub-section (1B) to s. 271, the necessity for "prima facie satisfaction" for initiation of penalty proceedings continues to be a jurisdictional fact. The AO has to record the finding that there was concealment of income. In the s. 143(3) assessment order, the AO has not mentioned a word that there was furnishing of inaccurate particulars or concealment of income. He made the addition merely on the ground that the assessee was not able to

produce any evidence for writing off of the amount in the books of account. As the satisfaction that the assessee had concealed income or furnished inaccurate particulars of such income is not discernible from the assessment order, the penalty order suffers from lack of jurisdiction to impose penalty.

For concluding whether there was any concealment or if inaccurate particulars were furnished, the relevant time is when the return was filed.

Addl. CIT v. Prem Chand Garg 24 DTR 513 (TM) (Delhi) (Trib)

The fact, whether there is concealment of income or whether inaccurate particulars thereof have been furnished, is essentially a question of fact. To find out that or to decide which, all the attending circumstances have to be taken into account. The question is at what point of time this material fact is to be found out. Generally it is with reference to the return of income and at that time it is to be seen whether there was concealment of income or furnishing of inaccurate particulars thereof in the return of income chargeable to tax.

No penalty when a bonafide claim is rejected

It is also a fundamental principle of penalty that no penalty can be levied just because a claim preferred by the Assessee is disallowed. Reliance, in this regard, is placed on the following decisions, among others:

(1) PWC Pvt. Ltd. vs. CIT [(2012) 348 ITR 306 (SC)]

There is also no question of the assessee furnishing any inaccurate particulars. All that happened in the present case is that through a bona fide and inadvertent error failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.

(2) CIT v/s. Reliance Petroproducts P. Ltd. 322 ITR 158 (SC)]

Section 271 (1) (c) applies where the assessee "has concealed the particulars of his income or furnished inaccurate particulars of such income". The words "inaccurate particulars" mean that the details supplied in the return are not accurate, not exact or correct, not according to truth or erroneous. In the absence of a finding by the AO that any details supplied by the assessee in its return were found to be incorrect or erroneous or false, there would be no question of inviting penalty u/s 271(1)(c). By no stretch of imagination can the making of an incorrect claim in law tantamount to furnishing inaccurate particulars. A mere

making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. If the contention of the Revenue is accepted then in case of every return where the claim made is not accepted by the AO for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intent of the Legislature.

(3) T. Ashok Pai v/s. CIT [(2007) 292 ITR 11 (SC)]

If an explanation given by the assessee with regard to the mistake committed by him has been treated to be bona fide, the question of his failure to discharge his burden in terms of the Explanation to section 271(1)(c) does not arise. The language of the provision signifies a deliberate act of omission on the part of the assessee. Such deliberate act must be either for the purpose of concealment of income or furnishing of inaccurate particulars.

(4) Mahadeswara Movies vs. CIT (1983) [144 ITR 127 (KAR)]

The assessee, a film distributor, had claimed amortisation expenses that the ITO found to have already been included in profit and loss account filed by assessee alongwith return of income. This mistake readily accepted by assessee as inadvertent one. No attempt was made by the assessee to suppress any material facts. Further, in the past no such

mistake had occurred was a relevant circumstance to be taken into consideration, and there was nothing improbable in the explanation that the mistake was due to inadvertence. Therefore, the levy of penalty was not justified.

IF THE ASSESSEE DISCLOSES ALL MATERIAL INFORMATION OF HIS INCOME, HIS ONUS STANDS DISCHARGED.

Dilip N. Shroff V/S. JT. CIT [(2007) 291 ITR 519 (SC)]

Even if Explanation is taken recourse to, a finding has to be arrived at having regard to clause (A) of Explanation 1 that the Assessing Officer is required to arrive at a finding that the explanation offered by an assessee, in the event he offers one, was false. He must be found to have failed to prove that such explanation is not only not bonafide but all the facts relating to the same and material to the income were not disclosed by him. Thus, apart from his explanation being not bona fide, it should have been found as of fact that he has not disclosed all the facts which was material to the computation of his income.

Kanbay Software India (P) Ltd. vs Dy. CIT 22 DTR 481 (Pune)]

As long as the information given in the income tax return is correct and complete to the best of assessee's knowledge and belief, it cannot be said that the statutory obligation under section 139(1) is contravened which, even for a civil liability for penalty being imposed, is a sine qua non.

2.9 Ld. DR supported the orders of lower authorities and contends that by not filing the revised return assesse has avoided the payment of taxes and therefore, it is liable for penalty u/s 271(1)(c). Both the lower authorities have demonstrated that assessee has deliberately concealed the particulars in this behalf and furnished inaccurate particulars.

2.10 Ld counsel for assesse in rejoinder contends that the contentions of ld. DR have no bearing on the issues in question. There is no provision u/s 271(1)(c) for imposing penalty for not filing a revised return qua which all the particulars are times and again filed by the assesse and are in the possession of the department. Besides the facts have not been disputed. None of the authority below in any way demonstrated much less even indicated that assesse furnished any inaccurate particulars or concealed any income. There is no scope of this penalty given the undisputed facts, circumstances and judicial precedents. The penalty cannot be imposed when department does not dispute the possession of documents, evidence, information, high Court order and other material filed by the assesse.

2.11 We have heard the rival contentions and perused the material available on record. Facts have been narrated in details above which need not be repeated in our conclusion.

i. As the record reveals assesse had filed all the relevant documents, information and events before ld. AO during the course of filing of return for AY 2006-07, assessment proceedings and in AY 2007-08 also. When the order of Hon'ble Rajasthan High Court approving the scheme of demerger was passed, the same was also duly and promptly filed by the assesse with ld. AO. These facts have not at all been disputed by the department in any manner.

ii. The allegation of concealment or inaccurate particulars has not been established by the ld. A.O. on discovery of any new fact, information or inquiry. The entire adverse inference is drawn on nothing but asseessee's own record and Hon'ble High Court approval for demerger schemes after the income tax department is heard. In our considered view there exists no scope to hold that assesssee has concealed any fact or furnished inaccurate particulars in the return of income dtd. 27-11-2006 filed prior to approval of demerger scheme by Hon'ble Rajasthan High Court. So also in the return filed in response to notice u/s 148 as it is not disputed that assessee did not claim any set off of loss. Thus we see no justification in alleging that assesssee has concealed any fact or furnished inaccurate particulars in any returns of income.

iii. a multitude of undisputed facts mentioned above clearly demonstrate that there were no effort much less intention to conceal any particulars or file any inaccurate particular of income by assessee testing it on the touchstone of preponderance of probability, human conduct, surrounding circumstances or reasonable logic.

iv. There is no loss to revenue as assessee has paid all the due taxes. It has not taken any advantage as it has not claimed any set off of such losses in any manner in the subsequent year. There being repetitive and full disclosure of facts and record; there being no loss to revenue as the loss is not set off by the assesse and merely because revised return is not filed by the asssessee, it is desirable the all the surrounding circumstances, human conduct and assessee's explanation are to be considered in harmonious manner. Considering all the aspect we are not in agreement with authorities below that assessee concealed or filed inaccurate particulars of income so as to be liable for impugned penalty.

v. Having filed all the relevant details on several occasions whose veracity is not at all challenged by the revenue, the sole issue remains whether the impugned concealment penalty is legally or factually leviable for not filing of a revised return which was undertaken by assesse. In our considered view penalty provision for not filing a return are different i.e. sec 271(1)(a) and not 271(1)(c). Besides in original return or notice u/s 148 assesssee did not conceal any income or furnished inaccurate particulars. By the time or original return merger scheme was not approved and assesse offered income in return in response to notice u/s 148. It is trite law that penalty u/s 271(1)(c) cannot be imposed by picking up one default, the levy is to be considered after carefully considering the entirety of facts, record, assessee's submissions, judicial precedents and applying proper discretion. Any penalty imposed without proper care and in an arbitrary manner has a propensity to become untenable.

vi. There is no provision in the IT Act for levying concealment of income u/s 271(1)(c) for non-filing of a return. The relevant provision is sec. 271(1)(a), which is neither initiated nor attracted. Thus the penalty has been imposed for not filing a return and unfounded allegation that assessee filed inaccurate particulars in return of income dtd. 27-11-06 is unsustainable.

vii Assessee having offered a satisfactory explanation which remains largely uncontroverted, it becomes clear that it discharged its primary onus to furnish an explanation which is corroborated by undisputed facts and substantiated by record about its truthfulness. In our considered view this is not a fit case for imposition of penalty.

viii. Our view is fortified by Hon'ble Supreme Court judgments in the case of Reliance Petro Products holding that when the relevant information is submitted in the return of income, it is to be held that assesse has the assesse has discharged its onus of offering a satisfactory explanation.

ix. Hon'ble Supreme Court in the case of Hindustan Steels (supra) has held that penalty should not be imposed merely because it is lawful to do so. Besides technical or venial breach of law can not be visited with stringent penalty proceedings u/s 271(1)(c). With all the record in possession of department, inadvertent non filing of revised return cannot constitute a decisive factor for imposition of penalty at the cost of host of other facts available on record demonstrating that assessee filed all the relevant details times and again suo motu. A technical default for which provisions of sec.

271(1)(a) may be attracted cannot be made a basis for penalty u/s 271(1)(c).

x. In consideration of above facts and circumstances of the case, relying on the Hon'ble Supreme Court judgments in the cases of Reliance Petro Products, Price Water House, Hindustan steels and host of other judgments on other relevant issues, we hold that, this is not a fit case for imposition of penalty u/s 271(1)(c). The same is deleted.

3.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 08/01/2016

Sd/-	Sd/-
(विक्रम सिंह यादव)	(आर.पी.तोलानी)
(Vikram Singh Yadav)	(R.P.Tolani)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 08 /01/ 2016
*Mishra
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s. Associated Stone Industries (Kotah) Ltd., Kota
2. प्रत्यर्थी / The Respondent- The ACIT , Circle- 1, Kota
3. आयकर आयुक्त(अपील) / CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.512/JP/2013)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar