आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL INDORE BENCH, INDORE

BEFORE SHRI PARESH M JOSHI, JUDICIAL MEMBER
AND
SHRI ARVIND SONI , ACCOUNTANT MEMBER

ITA No.911, 912 & 913/Ind/2025
(AY: 2014-15, 2013-14 & 2009-10)

Rajkumar Khilwani, 20-21, Sun Villas, Chunabhatti, Bhopal **(PAN:AGNPK2589F)**	बनाम/ Vs.	Assistant Commissioner Of Income Tax Central Circle-2, Bhopal
(Appellant)		(Respondent)
Assessee by	Sh. S.S. Deshpande,CA	
Revenue by	Shri Binay Kumar Rai, Sr.DR	
Date of Hearing	28.09.2026	
Date of Pronouncement	22.10.2026	

आदेश / O R D E R

Per Paresh M Joshi, J.M:

ITA No:- 911/Ind/2025 (Assessment Year : 2014-15)

This is an appeal filed by the Assessee under section 253 of the income tax Act 1961,[hereinafter referred to as the **Act** for the sake of brevity] before this tribunal, as & by way of a second appeal .The Assessee is aggrieved by the order in the first appeal No:-CIT (A)-3, Bhopal/IT/10202/2013-14 dated **31.07.2024** passed by the Ld. CIT(A) u/s 250 of the Act, which is hereinafter referred to as the **"Impugned order".**

The Relevant Assessment year is 2014-15 and the corresponding previous year period is from 01.04.2013 to 31.03.2014.

2. **Factual Matrix**

2.1 That as and by way of an order **made u/s 271AAB (1) of the Act, a total penalty aggregating to Rs. 2,81,885/- was imposed on the assessee u/s 271AAB(1)(c) of the Act.** The tabular form of the penalty is as under:-

The total inaccurate income on Unexplained cash	Rs.	3,77,000/-
60% of above	Rs.	2,26,200/-

The total inaccurate income on Foreign travel expenses	Rs.	75,000/-
60% of above	Rs.	45,000/-

The total inaccurate income on Unexplained Share Capital	Rs.	17,808/-
60% of above	Rs.	10,685/-

2.2 That **initially a search and seizure action u/s 132 of the Act was conducted on the residential and business premises of the assessee and associated concern on 29.01.2014**. That the assessee is an individual and having income from the business & profession, partnership firm and other sources. The assessee had filed his **ROI on 30.11.2014** and had declared total income of **Rs. 2, 14,090/-.**

2.3 That in the case of the assessee the assessment order u/s153 rws 143(3) of the Act for Assessment Year 2014-15 was passed on **23.03.2016** with total assessed income of Rs. **29,85,840/-.** The additions were made on the following issues:-

- Foreign travel expenses: Rs. 2,50,000/-
- Unexplained jewellery : Rs. 14,63,442/-
- Unexplained Shale Capital : Rs. 1,81,308/-
- Unexplained Cash : Rs. 8,77,000/-

2.4 However, the assessee being aggrieved by the aforesaid Quantum Assessment order dated 29.03.2016 preferred the first appeal to the Ld. CIT (A) Bhopal against the said assessment order dated 23.03.2016. The Ld. CIT (A) however **gave a partial relief** to the assessee but however confirmed the following additions which were modified as under:-

- Foreign Travel Expenses:- Rs. 75,000/-
- Unexplained Cash : Rs. 3,77,000/-
- Unexplained Shale Capital : Rs. 17,808/-

2.5 That a show causes notice dated 12.03.2020 was issued to the assessee calling upon the assessee to show cause as to why the penalty under section 271AAB(1) of the Act should not be imposed on it.[PAPER BOOK Page 67]

2.6 That the assessee in his submission received on 18.03.2020 interalia contended that the additions are made not on basis of anything like money, bullion, jewellery or any entry in the books of accounts or other documents or transactions found during the course of search. The

additions have been made solely on the basis of entries appearing in the passport of the assessee, further no document or transaction was found indicating that the assessee had incurred expenses which were all estimated by the Ld. Assessing Officer. The additions are pure estimation basis without reference to the seized record and hence no penalty be imposed.

2.7 The Ld. Assessing Officer in the penalty order dated 24.12.2020 has held as under:-

> ***"6.0 Conclusion***
>
> ***6.1 The reply of the assessee has been duly considered but not found acceptable. Since, the assessment was completed on the basis of evidences on record and since the assessee has not admitted undisclosed income u/s 132(4) of the Act and not substantiated the manner in which it was derived and has not declared undisclosed income in the ROI filed, provision of section 271AAB (1) (c)is applicable in this***

case. Section 271AAB (1) (c) of Income Tax Act, 1961 is as under:

> ***(1)The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of July, 2012 but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,-***
>
> ***c) a sum computed at the rate of sixty per cent of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b).***

6.2 Considering the fact that assessee has concealed the true facts of his income, while

filing the ROI u/s 139(1) of the Income Tax Act, 1961. Having regard to the above and considering the totality of the facts and circumstances of the case I am satisfied that the assessee has knowingly and intentionally concealed its correct income to the tune of Rs 4,69,808/- in the return of income filed u/s 139(1) of Income Tax Act, 1961 for the A.Y. 2014-15 for which it is liable for penalty u/s 271AAB of the Income tax Act. 1961. The appeal of the assessee before Id.CIT(A) has been partly allowed. The penalty u/s 271AAB(1)(c) is therefore being levied on the issues confirmed by the CIT(A) and issues in which the assessee has not preferred appeal which are as under:

The total inaccurate income on Unexplained cash	**Rs.**	**3,77,000/-**
60% of above	**Rs.**	**2,26,200/-**

The total inaccurate income on Foreign travel expenses	**Rs.**	**75,000/-**
60% of above	**Rs.**	**45,000/-**

The total inaccurate income on Unexplained Share Capital	**Rs.**	**17,808/-**
60% of above	**Rs.**	**10,685/-**

7. Considering the facts and circumstances of the case, I levy a penalty of Rs. 2,81,885/- (Rs two lakh eighty one thousand eight hundred eighty five only) under section 271AAB(1) (c) of the Income tax Act 1961.

8. This order is passed with the previous approval of Add.CIT (Central), Bhopal vide document no. ITBA/PNL/S/992/2020-21/1027292774(1) dated 15.06.2020."

2.8 That the aforesaid order u/s 271AAB(1)(C) of the Act bears No:- ITBA/PNL/F/271AAB(1)/2020-21/1029233931(1) and that the same is dated 24.12.2020 which is hereinafter referred to as the **"Impugned Penalty Order" u/s 271AAB(1) of the Act".**

2.9 That the assessee being aggrieved by the aforesaid **"Impugned Penalty Order"** prefers the **first appeal u/s 246A of the act** before the Ld. CIT (A) who by the **"Impugned Order"** has **dismissed the first appeal of the assessee** on the grounds and the reasons stated therein. The core grounds and the reasons for the dismissal of the first appeal were as under:-

> ***"The Ld AO has initiated penalty proceedings u/s 271AAB of the 'Act' as the appellant has concealed the said income. Being aggrieved with the assessment order passed u/s 143(3), the appellant preferred appeal before CIT(A). The CIT(A) gave partial relief and confirmed the following additions:***

Foreign travel expenses: Rs.75,,000/-, Unexplained cash: Rs.3,77,000/-and Unexplained Share Capital: Rs.17,808/-.

In compliance to decision of CIT(A) in this case, the Ld.AO has issued show cause notice on 12/03/2020. In response to show cause notice dated 12/03/2020, the appellant submitted reply which was considered by the Ld.AO but was not accepted as merit of the matter involved has already been decided against the assessee by CIT(A)-3,Bhopal. Accordingly, the Ld.AO has levied penalty of Rs.2,81,885/- u/s 271AAB of the Act for A.Y.2014-15.

Thus, the contention of the appellant that levying the penalty was not justified is not acceptable as the appellant not disclosed concealed income in the return of income filed. The nature of addition already indicates concealment of income in this case.

In view of above discussions, I find no merit on the grounds raised by the appellant. Therefore, passing the penalty order u/s 271AAB(1) of the 'Act' and levying penalty of Rs.2,81,885/- is fully justified & proper and in accordance with the provisions made under the Income Tax Act. Accordingly, the appeal on this ground is dismissed."

2.3 That the assessee being aggrieved by the **"Impugned Order"** has preferred the instant second appeal before this tribunal and has raised the following grounds of appeal in the form no. 36 against the **"Impugned Order"** which are as under:-

"1. That on the facts an in the circumstances of the case of the assessee the Ld Commissioner of Income Tax was not justified in deciding the appeal, ignoring the adjournment application filed on 14.05.2025.

2. That on the facts an in the circumstances of the case of the assessee the Ld Commissioner of Income Tax was not justified in confirming levy of penalty on additions which have been set aside/deleted by the ITAT.

3. That on the facts an in the circumstances of the case of the assessee the Ld Commissioner of Income Tax was not justified in confirming the levy of penalty without first deciding whether the additions made constituted "Undisclosed Income" as defined under the Act.

4. That on the facts an in the circumstances of the case of the assessee the Ld Commissioner of Income Tax was not justified in confirming levy of penalty on additions made on estimated basis.

5. That on the facts an in the circumstances of the case of the assessee the Ld. Commissioner of Income

Tax was not justified in confirming the levy of penalty of RS. 2,81,885/-.

6. The assessee craves leave to add, alter amend or withdraw any ground of appeal on or before the time of hearing."

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 28.09.2026 when the Ld. AR for & on behalf of the Assessee appeared before us and interalia contended that the **"Impugned Order"** is bad in law, illegal and not proper. It therefore deserves to be set aside.

3.2 The Ld. AR also informed us that today **three appeals** are listed for hearing and in so far as ITA No:- 913/Ind/2025 is concerned it pertains to AY 2009-10 wherein penalty is under 271(1)(c) and so also in ITA No:- 912/Ind/2025 AY 2013-14 wherein too the penalty is under 271(1)(c). **In the**

instant appeal No:- 911/Ind/2025 AY 2014-15 the penalty is u/s 271AAB(1) of the Act. It was decided with the consent of both the parties that all the three appeals be taken together and be heard. The Ld. AR then submitted to us that in so far as Quantum Assessment proceedings are concerned finally the Ld. CIT (A) has confirmed the additions on three scores i.e. (1) Foreign travel expenses of Rs. 75,000/-

(2) Unexplained cash of Rs. 3,77,000/-

(3) Unexplained share capital of Rs. 17,808/-

And basis that @ of 60% the respective penalty's are imposed and stands confirmed by the Ld. CIT(A) in quantum proceedings.

The ground No:-2 that these additions which were confirmed by the Ld. CIT (A) have been set aside/deleted by the ITAT and hence the said ground No:-2 above is not pressed. Our attention was then invited to PB page 35 which is copy of "**Impugned Assessment Quantum Order"** dated 23.03.2016 u/s **153A rws 143(3)** of the Act. Our kind attention was then invited to PB page 42

[Back side] Para 9 which deals with **"foreign travels expenditure by the assesse and family members"** and that the same was read out. Copy of passport was submitted by the assesse. Basis Para 9(iii) PB page 43 it was submitted that anestimation was made by the Ld. AO. Hence basis estimation the penalty cannot be imposed.

3.3 It was further submitted that the imposition of penalty of Rs. 75,000/- is therefore incorrect on the score of **foreign travel expenses.** Even though the addition on this score is confirmed by the Ld. CIT (A) only to the extent of Rs. 75,000/- against Rs. 2,50,000/- as per Quantum Assessment Order dated 23.03.2016.

3.4 With regard to the second score of **unexplained cash** an amount of Rs. 8,77,000/- as addition was confirmed by the Ld. AO by virtue of Para 7 of the **Impugned Quantum Assessment Order** dated 23.03.2016 **which was modified by the Ld. CIT (A) to Rs. 3,77,000/-.** In this regard our attention was invited to the PB page 40 and correspondingly

to the observation of the Ld. CIT (A) order on Quantum dated 26.12.2018 PB page 22 to 34. Basis PB page 33 & 34 Para 12.3 which was read out wherein the amount of Rs. 8,77,000/- is modified/reduced to Rs. 3,77,000/- on ground that amount of Rs. 50,000/- belongs to children which was received by them from various persons on various occasions. Gifts are received by children in family from Rs. 101/- to 5001/- which they keep with Parents hence the amount of Rs. 5,00,000/-was deleted and addition of Rs. 3,77,000/- was confirmed.

3.5 With regard to the issue of **"unexplained share capital"** our attention was drawn to PB page 50 & 51 Para 12 of the Quantum Assessment Order dated 23.03.2016 and same was read out, correspondingly our attention was invited to PB page 27, 29 which was the Ld. CIT (A) order dated 26.12.2018 on the Quantum and Para 8.4 was relied upon page 29 of the Paper book wherein the amount was restricted to Rs. 17,808/- from Rs. 1,81,308/- on this score.

3.6 In summation of the arguments the Ld. AR submitted that

(1) There is no satisfaction of the Ld. AO in the **Impugned Quantum Assessment Order** either on charge of concealment or inaccurate particulars. Reliance was placed on the judgement of jurisdictional High Court in case of Kulwant Singh Bhatia and case of Manjunath Cotton of Apex Court & Karnataka High Court wherein SLP in the Hon'ble Supreme Court was dismissed. With regard to 271(1)(C) of the Act there is no satisfaction of the Ld. AO in Quantum assessment order dated 23.03.2016 and hence no penalty is called for u/s 271(1)(C) of the Act.

(2) The additions are made in the quantum assessment order dated 23.03.2016 all modified basis estimation by the Ld. CIT (A) and made by the Ld. AO (Quantum).

(3) With regard to AY 2014-15 i.e. ITA No:- 911/Ind/2025 our attention was again invited to PB page 39 caption cash at residence and locker and again correlation with Para 12.3 of the Ld. CIT (A) order dated 26.12.2018 PB page 22 to 34, which ultimately are basis estimation only.

(4) Section 271AAB(1)(c) as it stood. At relevant time postulated **minimum penalty to be computed @ 30% instead of 60% was emphasised.** The undisclosed Income stands defined too u/s 271AAB (1) (c). Foreign tour expenses etc. are found during the assessment year basis estimation only. It is not found in course of search proceedings hence no penalty.

3.7 Per contra the Ld. DR for the revenue contended that in ITA No:-913/Ind/2025 AY 2009-10 and in ITA No:-912/Ind/2025 AY 2013-14 penalty's are under section 271(1)(c) of the Act whereas in ITA No:- 911/Ind/2025 AY 2014-15 the penalty is u/s 271AAB(1) of the Act. The additions are confirmed by the Ld. CIT (A) in the Quantum proceedings are basis merits and it cannot be called estimation at all. Foreign travel and share capital are all cash transactions. There is non-disclosure of foreign tour in totality. No details furnished on foreign countries travelled. Sources of cash not disclosed for the share capital. It is not estimation. Fixed amounts are identified. **There is a**

satisfaction of the Ld. AO. Attention was invited to PB page 55 which was a show cause notice dated 12.03.2020 for AY 2009-10 where charge of concealment of particular of income are brought out expressly. Simultaneously our attention was invited to PB page 61 which was a show cause notice dated 12.03.2020 for AY 2013-14 wherein too the charge of concealment of particulars of income are brought out expressly. It was submitted that addition/subsistence of the **addition of Rs. 3,77,000/- partakes the character of undisclosed income** and therefore total addition was of Rs. 8,77,000/- as unexplained cash was made in AY 2014-15. The Ld. CIT (A) had given leeway towards gift to children in family of Rs. 5 Lakh which is a decent amount basis Para 12.3 of the Ld. CIT (A) order dated 26.12.2018. The Ld. DR in the summation stated **that penalty be upheld**. In the rejoinder argument the Ld. AR submitted that in the Quantum Assessment Order no specific satisfaction is recorded. Day to day cash flow was not filed. For foreign travel expenses part debit in firm's accounts though bifurcation was not given. It

was emphasised at tag end of the hearing that for AY 2014-15 minimum penalty was liveable at 30% for the AY 2009-10, and for the AY 2013-14 levy u/s 271(1)(C) of penalty is @ 30% (calculating tax). Hearing was over and closed.

4. **Observations Findings & conclusions**

4.1 We have to decide the legality, validity and proprietary of the **"impugned order"** basis records of the case & the rival submission canvassed before us.

4.2 We have carefully perused the records of the case and have heard the submissions.

4.3 We basis records of the case & after hearing & further upon examining the rival contentions of the Ld. AR & the Ld. DR canvassed before us are of the considered opinion that the **"Impugned Penalty Order u/s 271 AAB(1) of the Act" warrants levy of minimum penalty @30% and not 60% as substantial relief has been given to the assessee by the Ld. CIT(A) by Quantum appellate order dated 26.12.2018 [PB page 22 to 34]** while it is true that the Quantum

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assessment order dated 23.03.2016 was under section 153A RWS 143(3) of the IT Act 1961 for AY 2009-10, AY 2013-14, AY 2014-15 which is popularly called "**search assessment case"** in tax parlance. However, we are of the considered opinion that the Ld. CIT (A) in his first appeal appellate order dated 26.12.2018 has given leeway basis after considering the entire gamut of the case in hand on merits. The contention of the Ld. AR that estimation has played role at both the Quantum assessment order and at Impugned Order of the Ld. CIT (A) on **Quantum is wrong**. The additions is on three broad issue for AY 2014-15 which were **"foreign travel expense**", "**unexplained cash**" and **"unexplained share capital"** which in the essence are attracting the **material ingredients of section 271AAB(1)(c).** Further 271AAB explanation (c) the undisclosed income means:-

> ***"(c) "undisclosed income" means—***
>
> ***(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewelry or other valuable article or thing or any entry in the books of account or other documents or transactions***

found in the course of a search under section 132, which has—

(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or

(B) otherwise not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search; or

(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted."

In order to come out of the ambit and scope of the section 271AAB(1)(c) the burden is on the assessee that the additions and/or modification of additions done by the Ld. CIT (A) by partly allowing the Quantum first appeal has given a clear cut exoneration to the assessee on undisclosed

income as defined which the Ld. AR has failed to demonstrate basis law, On the contrary a plea of estimation is taken at both levels of the lower authorities i.e. the Ld. AO and the Ld. CIT (A) which save and except the word **"estimation"** is not empirically proved/Established on merits before us. Hence we reject plea of the assessee on the **"theory of estimation"** so canvassed. **Modification of the Quantum assessment order of the Ld. AO whereby the additions are reduced perse does not mean estimation of income.** The Ld. CIT (A) on merits has given modification of the Impugned Quantum Assessment Order which by any stretch of imagination cannot be called **"estimation"** of income in search case. Even the Impugned Quantum Assessment Order is basis merits of the case. The Ld. CIT (A) in the Impugned Order has rightly held such modified income by the Ld. CIT(A) __ **modified additions were not declared in the ROI rather it has been held that the same were undisclosed income which became known upon search only.** However, we are of the considered opinion in the given facts and circumstances that since at the material

time AY 2014-15 the **minimum penalty was 30%** same ought to be levied instead of 60%. Accordingly the Impugned Order is modified by us in the facts & circumstances of the case and we fix the minimum penalty of 30%. The appeal of the assessee is partly allowed as nature of additions so sustained by Ld. CIT(A) in the impugned falls under undisclosed income and mischief of section 271AAB(1)(C) of the Act. The Ld. AR has failed to assail the **"Impugned order"** basis any cogent grounds on merit. Ground No. 2 is too not pressed.

4.4 ***ITA No:- 912/Ind/2025 (AY 2013-14)***

In this appeal as and by way of the order u/s 271(1)(c) of the Act the total penalty is of Rs. 61,800/-. The Quantum of total concealed income is Rs. 2,00,000/-. Three time of tax as penalty is worked out at **Rs. 1,85,400/-** [minimum]. Tax on above is **Rs. 61,800/-.** By Impugned Order dated 31.05.2025 the first appeal is dismissed. The Ld. DR basis PB page 61 which is a copy of the show cause notice dated 12.03.2020 for AY 2013-14 has demonstrated that there is a charge of **concealment/concealed the particular of**

income which is a specific charge i.e. one limb out of two u/s 271(1)(c) of the Act.[PB page 61] invoked, expressly. The Ld. AR has emphasised on the judgement of Hon'ble MP High Court in case of PCIT v/s Kulwant Singh Bhatia reported in (2018) 33 ITJ 777(MP) and that of Karnataka High court in case of CIT v/s Manjunatha Cotton ginning factory (2013) 359ITR 569(KAR) later Apex Court dismissed the SLP. We have perused both the orders of the Hon'ble High Court of MP and Karnataka wherein sum and substance it has been held that the show cause notice u/s 271(1)(c) of **the Act should be specific on the charge.** It should not be vague and cryptic. However in the above show cause notice dated 12.03.2020 we find charge of concealment of Income as specific. **Only one limb out of two of Section 271(1)(c) is stated, under these facts we are not inclined to appreciate the argument of the Ld. AR**. Further we find that in so far as Impugned Order on the penalty of the Ld. CIT (A) dated 13.05.2025 is concerned same is not assailed on any meritorious grounds. In the Quantum assessment Order dated 23.03.2016 for the AY

2013-14 **we observe satisfaction for penalty u/s 271(1)(c) is pointed out [PB page 44].** Therefore contentions of the Ld. AR that no satisfaction is recorded in the Quantum Assessment Order **is devoid of merits.** In the Impugned Order charge on concealment of income in ROI/ ROI u/s 153A is found to be correct. Nature of addition to speaks of concealment of income. Merely because Quantum appellate order has reduced the addition perse does not mean that charge of concealment of income too disappears and no penalty is to be imposed. Hence we uphold the Impugned Order and dismiss the Appeal.

4.5 ITA No:- 913/Ind/2025 (AY 2009-10)

In the above appeal too the facts and circumstances are more or less **pari materia** save and except the order imposing penalty by the Ld. AO and Impugned Order of the Ld. CIT (A). Hence our finding in ITA No:- 912/Ind/2025 would apply mutatis mutandis to this appeal too.

4.6 In the result ITA No:- 911/Ind/2025 is partly allowed as penalty to be at Minimum 30% instead of 60%.

ITA No:- 912 & 913/Ind/2025 is rejected.

5 **Order**

5.1 **ITA No: - 911/Ind/2025 is partly allowed & ITA 912 & 913/Ind/2025 is dismissed.**

Pronounced in open court on 22.10.2026.

Sd/-	**Sd/-**
(ARVIND SONI)	**(PARESH M JOSHI)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Indore
Dated: 22/10/2026

Copies to:
(1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

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