

PENALTY U/S 271(1)(c)

Version 1.2



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This document would help in better understanding of critical issues u/s 271(1)(c) of the Income Tax Act, 1961 through various judicial pronouncements.

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STATUTORY SUMMARY

1. Provisions of section 271(1)(c) provides for imposition of penalty for concealment of income i.e. such a penalty can be imposed only when the assessee has:
 - a. Concealed the particulars of his income; or
 - b. Furnished inaccurate particulars of income.
2. Penalty would only be levied by the Assessing Officer, CIT (A) or CIT during any proceedings under the Income Tax Act, 1961.
3. The penalty is in addition to tax and interest, if any payable by the assessee.
4. Penalty u/s 271(1)(c) shall be leviable only if the assessing officer is satisfied that the assessee has concealed the particulars of his of his income or has furnished inaccurate particulars of income.
5. The minimum amount of penalty is 100% of the tax sought to be evaded and maximum amount shall not exceed 300% of the amount of tax sought to be evaded.
6. The said section is not applicable to any assessment for the assessment year commencing on or after the 1st day of April, 2017. From this date penalty would be on under-reporting and misreporting u/s 270A.

SATISFACTION OF ASSESSING OFFICER

Concealment of particulars of income or furnishing inaccurate particulars of income is the condition precedent for levy of penalty and such satisfaction must be arrived at in the course of any proceeding under the Act. Furthermore, such satisfaction is to be arrived at from the accounts of the assessee. Certain judicial precedents on the issue are as under:-

1. Karnataka High Court in case of *The Pr. Commissioner Of Income Tax vs M/S Deccan Mining Syndicate Pvt on 21 June, 2018 I.T.A. No.501/2017* held that The AO Office had not given finding in the penalty order as to how and in what manner the assessee had furnished inaccurate particulars of income resulting in additions to the returned income, except making a bald charge against the assessee that it had furnished the inaccurate particulars, which is an



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essential requisite of section 271(1)(c) of the Act. In the absence of such finding, the penalty order is liable to be quashed.

2. Allahabad High Court in the case of Commissioner of Income Tax vs. Dee Contol and Electric Pvt. Ltd (2017) 100 CCH 0185 AllHC held that When, AO has not given any reason as to how he reached conclusion that “assessee has concealed it's income and furnished inaccurate particulars of its income” then, penalty imposed by AO against assessee is liable to be dismissed.
3. Punjab and Haryana High Court in the case of Rajnder Mohan Lal vs. Principal Commissioner of Income Tax ITA No. 359 of 2016 held that Where assessee did not offer any explanation for concealment of income and whatever explanation was offered was not substantiated through any evidence or material on record, explanation 1 to Section 271(1)(c) of the Act was clearly attracted.
4. The Hon'ble Supreme Court in D.M. Manasvi 86 ITR 557 (SC) held that satisfaction of the concerned tax authority to the effect that the assessee has either concealed the particulars of income or furnished inaccurate particulars of income is the condition precedent for levy of penalty and such satisfaction must be arrived at in the course of any proceeding under the Act.
5. Punjab & Haryana High Court in the case of CIT vs. Mohinder Lal 168 ITR 101, held that it is the satisfaction of the ITO in the course of assessment proceedings regarding the concealment of income which constitutes the basis and foundation of the proceedings for levy of penalty.
6. Delhi High Court in case of CIT vs. Jain Export Private Ltd. ITA No.235/2013 has held that to initiate proceedings u/s 271(1)(c) it requires proper investigation and higher satisfaction of proof, which confirmed the basis for the initiation of necessary proceedings. In absence of it, penalty provision cannot be invoked.



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7. Karnataka High Court in case of CIT vs. MWP Ltd. ITA No.332/2007 has reiterated the principle that in order to initiate penal proceedings u/s 271(1)(c) of the Act, satisfaction in relation to concealment of income has to be made clear in assessment order.
8. Bombay High Court in case of CIT vs. Rucha Engineers Pvt. Ltd 2015-ITRV-HC-MUM-025. held that before proceeding to the Explanation below s. 271 and putting the responsibility on the assessee, it is necessary for the AO to first demonstrate that the assessee's explanation or conduct is not reasonable on human probabilities, or that it was in the nature of violating settled legal positions. If the explanation is not fanciful, baseless or unacceptable, penalty cannot be levied.
9. Allahabad High Court in the case of Commissioner of Income Tax & ANR vs. Euro Footwear Ltd. & ANR. ITA Defective No. 114 of 2012, 799 of 2012 held that In absence of any finding, question of imposing penalty u/s 271(1)(c) on mere making of claim could not arise nor such imposition of penalty would be sustainable in law—Mere making of claim for certain deductions by itself would not amount to furnishing inaccurate particulars regarding income of Assessee.
10. Kerala High Court in the case of Commissioner of Income Tax vs. Samurai Techno Trading Pvt.Ltd. I.T.A.No.50 of 2009 held that Merely because of the assessee has made certain claims, which were not accepted or was not acceptable to the Revenue, that itself would not attract the penalty under Section 271(1)(c). If that is the interpretation accepted that in every return where the claim made is not accepted for some reason, the assessee will be inviting penalty under Section 271(1) (c).
11. Allahabad High Court in the case of Principal Commissioner of Income Tax vs. Allah Dad Tannery ITA No.-17 of 2016 held that When there was no allegation on record which suggests that the assessee had made any incorrect, erroneous or false details in his returns, than the penalty levied under section 271(1)(C) not justified.



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12. Allahabad High Court in the case of J.K. Synyhetics Ltd. vs. Commissioner of Income Tax ITA No. 125 of 2002 held that In the absence of any finding with regard to the concealment or with regard to lack of bonafidies of assessee in furnishing correct material particulars, no penalty would be attracted under the provisions of s 271(1)(c). Held, in the present case there was complete absence of recording of any finding that assessee had indulged in any concealment of any material particulars or that the explanation offered by him was not bonafide or false. Therefore, penalty which was imposed on items nos. 3, 4, 5, 12 & 13 was not justified and it was thereby set aside.
13. Bombay High Court in case of CIT vs. Dalmia Dyechem Industries ITA No.1396/2013 has held that no penalty could be levied unless assessee's conduct is dishonest, malafide and amounts concealment of facts and the AO must render the conclusive finding that there was active concealment or deliberate furnishing of inaccurate particulars.
14. Delhi ITAT Bench in the case of Modi Rubber Ltd., New Delhi vs Dcit, Circle- 17(1), 14.06.2018 ITA No.2559/Del./2018 held that when we examine the assessment order it is prima facie not discernible to make AO prima facie satisfy if the assessee has concealed the particulars of income or furnished inaccurate particulars of such income. AO has merely recorded findings at the far end of his order in mechanical manner that it is a fit case for imposition of penalty under section 271(1)(c) on all the issue on which addition/disallowances have been made, as discussed in the order. The factum of non-application of mind on the part of the AO get further corroborated from the vague and ambiguous notice issued u/s 274 read with section 271(1)(c) discussed in the preceding paras.
15. Delhi ITAT Bench in the case of Suresh Jindal, Karnal vs Ito, Karnal on 29 June, 2018 ITA No. 1664/Del/2015 held that no defect has been pointed out by the AO in the books of accounts of the assessee which could lead to the fact that particulars of income have not been disclosed by the assessee. However, it is a settled law that in case where the income has been estimated by applying a flat estimated rate of profit, and no other specific defects have been established which lead to concealment or furnishing of inaccurate particulars of income, no



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allegation could be made out against the assessee, making the conduct of assessee punishable with penalty.

16. Delhi ITAT Bench in the case of Ashwani Jaipaty vs. Deputy Commissioner of Income Tax ITA.No.276/Del./2018 held that Valuation of Stamp Valuation Authority was not conclusive evidence of receipt of money by assessee over and above what was recorded in sale deed. A.O. had not brought any concrete evidence of concealment of income in order. In absence of any positive evidence with respect to concealment of income, there was no justification for A.O. to levy penalty in matter
17. Amritsar ITAT (third member) in the case of HPCL Mittal Energy Ltd vs. ACIT ITA Nos.554 & 555/Asr/2014 held that The AO cannot initiate penalty on the charge of 'concealment of particulars of income', but ultimately find the assessee guilty in the penalty order of 'furnishing inaccurate particulars of income' (and vice versa). In the same manner, he cannot be uncertain in the penalty order as to concealment or furnishing of inaccurate particulars of income by using slash between the two expressions.
18. Delhi ITAT in the case of Ranutrol Industries Ltd., New vs ITO ITA No.2332/Del/2011 held that the Assessing Officer was not specific as to the offense committed by the assessee. In the penalty proceedings, the Assessing Officer has imposed the penalty for concealing the particulars of income. Once, the Assessing Officer itself was not specific as to under which limb, the Assessing Officer was going to penalize the assessee or to seek explanation of the assessee, no penalty can be imposed against the assessee u/s. 271(1)(c) of the Act.
19. Delhi ITAT in the case of Atlas Cycle (Haryana) Ltd., vs DCIT, Sonapat on 26 April, 2018 1972 AIR 121, 1972 SCR (1) 127 held that penalty in dispute is not sustainable in the eyes of law, because the AO has not recorded any clear finding whether the assessee was guilty of concealment of income or furnishing of inaccurate particulars of income. Secondly, the notice u/s. 271(1)(c) has been issued to the assessee levying the penalty for furnishing of



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inaccurate particulars of income/concealment of income, whereas the penalty in dispute has been levied by the AO on account of furnishing of inaccurate particulars.

20. Amritsar ITAT Bench in the case of Kashmir Steel Rolling Mills vs. Assistant Commissioner of Income Tax ITA No. 548/(Asr)/2016 held that Satisfaction of authority initiating penalty has to be prima facie and this satisfaction is not required to be reflected for each item of income or disallowance.
21. Mumbai ITAT Bench in the case of Indrani Sunil Pillai vs. ACIT ITA no. 1339/MUM/2016 dated 23.01.2018 held that in the absence of recording of satisfaction regarding the exact nature of offence, no penalty under section 271(1)(c) can be imposed.
22. Mumbai ITAT Bench in the case of Orbit Enterprises vs. ITO ITA NOS. 1596 & 1597/MUM/2014, dated 01.09.2017 held that Concealment of particulars of income" and "furnishing of inaccurate particulars of income" referred to in s. 271(1)(c) denote two different connotations. It is imperative for the AO to make the assessee aware in the notice issued u/s 274 r.w.s. 271(1)(c) as to which of the two limbs are being put-up against him. The failure to do so is fatal to the penalty proceedings.
23. Mumbai ITAT Bench in the case of Sanghavi Savla Commodity Brokers Pvt Ltd vs. ACIT dated 22.12.2015 ITA No.1746/Mum/2011 held that If show-cause notice does not delete inappropriate words whereby it was not clear as to whether the default is concealing particulars of income or for furnishing inaccurate particulars of income, the levy of penalty is invalid.
24. Mumbai ITAT Bench in the case of Mangalam Drugs & Organics Ltd vs. DCIT ITA NO.5454/Mum/2011 held that Penalty cannot be levied on all issues in a "wholesale" manner. The AO has to give findings for each issue separately. He has to apply mind meticulously and carefully for each issue separately and establish precisely whether there was concealment of income or furnishing of inaccurate particulars of income. The Assessee cannot be fastened with the liability of penalty without there being a clear or specific charge. Fixing a charge in



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a vague and casual manner is not permitted under the law. Fixing twin charges is also not permitted under the law.

25. Mumbai ITAT Bench in the case of Earthmoving Equipment Service Corporation vs. DCIT dated 02.05.2017 ITA No.6617/M/2014 held that Merely because the suppliers could not be traced at the given address would not automatically lead to a conclusion that there was concealment of income or furnishing of inaccurate particulars by the assessee.
26. Hyderabad ITAT Bench in the case of Bhavya Anant Udeshi vs. ITO dated 04.09.2015 ITA.No.565/Hyd/2015 held that Failure to apply s. 50C and offer capital gains as per the stamp value does not constitute concealment/ furnishing of inaccurate particulars of income for levy of penalty u/s 271(1)(c)
27. Delhi ITAT Bench in case of ADIT vs. GE Energy Control Systems ITA No.3522/Del/2012 has held that levy of penalty could not be justified without pointing out any specific defects.
28. Delhi High Court in the case of CIT vs. MTNL Ltd [2011-ITRV-HC-DEL-231] ITA No. 626/2011 held that there can be no penalty u/s 271(1)(c) without AO's finding on "Inaccurate Particulars".
29. Allahabad High Court in CIT vs. Triveni Engineering & Industries Ltd [2014-ITRV-HC-ALL-109] ITA No. 346 of 2009 held that if, in the assessment order, AO directs initiation of penalty on specific issues u/s. 271(1)(c)/ 271(1B) but not on others, he is not entitled to levy penalty on the other issues

Due to divergent views on recording of satisfaction by the AO in the assessment order being sine qua non for initiating penalty proceedings the legislature inserted sub-section (1B) in section 271 by Finance Act 2008 w.e.f. 1.4.89 which provides that a direction for initiation of penalty proceeding in the order of assessment shall be deemed to constitute such satisfaction. The



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constitutional validity of the said provision was challenged in *Madhushree Gupta & British Airways 317 ITR 143(Del)* has held that:

“Presence of prima facie satisfaction for initiation of penalty proceedings was and remains a jurisdictional fact which cannot be wished away as the provision stands even today, i.e post amendment.”

Therefore the satisfaction of the tax authority is still a condition precedent which must be discernible from the order of assessment.

“CONCEALMENT OF PARTICULARS” OR “FURNISHING OF INACCURATE PARTICULARS”

Section 271(1)(c) states that penalty can be levied if there is concealment of income or furnishing of inaccurate particulars of income. Some of the judicial pronouncements on what constitute concealment of income or furnishing of inaccurate particulars of income are as follows:

1. The Honorable Supreme Court in *CIT vs. SSA's Emerald Meadows I.T.A. NO. 380 OF 2015* has dismissed the SLP no finding merit in the department's appeal against Karnataka High Court Order which held that omission by the AO to explicitly specify in the penalty notice u/s 271(1) (c) as to whether penalty proceedings are being initiated for furnishing of inaccurate particulars or for concealment of income makes the penalty order liable for cancellation
2. Delhi High Court in *New Holland Tractors (India) Pvt. Ltd. vs. CIT [2014-ITRV-HC-DEL-185]* has discussed what accrual of income is. It also held that the word “conceals” inherently and per-se (itself) refers to an element of mens rea (i.e. intention of wrong doing), albeit (though) the expression "furnishing of inaccurate particulars" is much wider in scope.



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3. Bombay High Court in the case of CIT vs. Shri Samson Perinchery (Bombay High Court) ITA No. 1154 dated 05.01.2017 has followed the view taken by Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory and dismissed the argument of the revenue that there is no difference between furnishing of inaccurate particulars or concealment of income.
4. Andhra Pradesh High Court in the case of Pr. CIT vs. Smt. Baisetty Revathi dated 13.07.2017 ITA No. 684 of 2016 held that When the charge is either concealment of particulars of income or furnishing of inaccurate particulars thereof, the revenue must specify as to which one of the two is sought to be pressed into service and cannot be permitted to club both by interjecting an or between the two.
5. Gujarat High Court in the case of Nayan C. Shah vs. Income Tax Officer ITA No.2822/Ahd/2011 held that While issuing a notice under section 271(1)(c) of the Act, the Assessing Officer is required to specify as to what is the default on the part of the assessee, as to whether the case is one of furnishing inaccurate particulars, or whether it is a case of concealment of income, or both, hence view expressed by CIT(A) to effect that breach in question was technical and venial in nature, requires to be upheld and the impugned order passed by Tribunal upholding levy of penalty on the ground of suppression of particulars, deserves to be set aside.
6. Karnataka High Court in the case of Muninaga Reddy vs. Assistant Commissioner of Income Tax ITA NOS. 251/2016 & 390/2016 (T-IT) held that The assessee should know the ground for which the notice u/s 271(1)(c) was issued, as to whether it was for the concealment of income or furnishing incorrect particulars of the income; otherwise, the principles of natural justice would be violated and consequently, no penalty could be imposed on the assessee if there was no specific ground mentioned in the notice.
7. Delhi ITAT Bench in case of Poysha Goyal vs. ACIT [2015-ITRV-ITAT-DEL-012] ITA No. 1721/Del/2013 has held that no penalty u/s 271(1)(c) could be imposed when all



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necessary facts were disclosed by the assessee as such it could not be said that the assessee has either concealed any income or furnished inaccurate particulars.

8. The Karnataka High Court in Safina Hotels Private Limited vs. CIT ITA No.240/2010 has held that if the notice u/s 271 (1)(c) / 271(1B) is issued without application of mind (by striking out the relevant part in the notice), the penalty proceedings are invalid
9. The ITAT Delhi in M. G. Contractors Pvt. Ltd vs. DCIT ITA Nos. 7034 to 7038/Del/2014 has held that penalty u/s 271(1)(c) cannot be imposed if the AO does not specify whether the penalty is for "concealment of income" or for "furnishing inaccurate particulars". Penalty cannot be imposed in respect of income surrendered by the assessee if the AO does not link the income to incriminating documents
10. Delhi ITAT Bench in the case of Deputy Commissioner of Income Tax & ANR vs. Sahara India Life Insurance Co. Ltd. & ANR on 31.10.2018 ITA No. 3480/Del/2012, A.Y. 2007-08 held that penalty proceedings was initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. Said notice was in standard pro forma wherein irrelevant clauses were not struck off which indicates AO's non-application of mind while issuing such notice. Thus, penalty proceedings initiated by AO are bad in law and deserve to be delete
11. Delhi ITAT Bench in the case of YMK Holdings Pvt. Ltd vs. Income Tax Officer on 12.10.2018 I.T.A. No. 2449/Ahd/2016 held that it can be seen that the Assessing Officer was not sure under which limb of provisions of Section 271 of the Income Tax Act, 1961, the assessee is liable for penalty. instant case also the inappropriate words in the penalty notice has not been struck off and the notice does not specify as to under which limb of the provisions, the penalty u/s 271(1)(c) has been initiated, therefore, we are of the considered opinion that the penalty levied u/s 271(1)(c) is not sustainable and has to be deleted



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12. Agra ITAT Bench in the case of Sarla Devi Agarwal vs. Income Tax Officer ITA No. 70/Agra/2017 held that Notice which does not intimate the assessee of the particular facts, on the basis of which notice the order is proposed to be passed, would not comply with the requirements of s. 274.
13. Mumbai ITAT Bench in case of Eon Aviation Pvt. Ltd., Mumbai vs Dcit, 5(1), Mumbai on 29 June, 2018 I.T.A No.3011/Mum/2016 held that AO has initiated penalty u/s 271(1)(c) by issuing show cause notice u/s 274 without striking off inapplicable portion in the notice. Therefore, it is a clear case of non-application of mind by the AO as to whether penalty has been initiated for furnishing of inaccurate particulars of income or concealment of particulars of income. Even in the penalty order, the AO has levied penalty under Explanation 1 to section 271(1)(c) which is applicable for deemed concealment of particulars of income. Therefore, we are of the considered view that the AO was not clear while initiating penalty u/s 271(1)(c) and hence, the whole penalty proceedings is vitiated and consequently, penalty levied by the AO u/s 271(1)(c) cannot survive
14. Mumbai ITAT Bench in case of N. Jamnadas & Co., Mumbai vs Dcit Cen Cir 39, Mumbai on 27 April, 2018 ITA No. 4055/Mum/2016 held that the AO has levied the penalty by holding that there is concealment of income and also furnishing of inaccurate particulars of income on the part of the assessee, following the ratio laid down in Dilip N. Shroff (supra) and Samson Perincherry (supra), we hold that the penalty proceedings initiated by the AO is bad in law. We thus set aside the order of the Ld. CIT(A)
15. Kolkata ITAT Bench in the case of M/S. New Life Sonoscan Centre, vs Ito, Ward - 24(2) ITA No.2560/KOL/2017 held that the show cause notice issued in the present case u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income. The show cause notice u/s 274 of the Act does not strike out the inappropriate words. In these circumstances, we are of the view that imposition of penalty cannot be sustained.



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16. Mumbai ITAT Bench in case of DCIT vs. Genesys International Corporation Ltd. [2012-ITRV-ITAT-MUM-268/ ITA No.3333 & 3334/Mum/2010] has held that penalty could not be levied when assessee had made adequate disclosure with respect of unrealized export proceeds at the time of filing its return and no fault could be found on the conduct of assessee.
17. Madras High Court in case of CIT vs. Jayaraj Talkies (1999) 239 ITR 914 (Mad) has held that mere addition of income or surrender of income did not imply concealment of income where the assessee surrendered certain amount to assessment because it was unable to substantiate its claims with necessary vouchers.
18. Delhi ITAT Bench in case of Chintels India Ltd., New Delhi vs Acit, ITA No. 3791/Del/2016 held that when the assessee has not been specifically made aware of the charges leveled against him as to whether there is a concealment of income or furnishing of inaccurate particulars of income on his part, the penalty u/s 271(1)(c) of the Act is not sustainable
19. Indore ITAT Bench in case of DCIT vs. Nepa Limited [2015-ITRV-ITAT-IND-011] has held that it is incumbent upon the AO to state whether penalty was being levied for concealment of particulars of income by the assessee or whether any inaccurate particulars of income had been furnished by the assessee.
20. In CIT vs. Lakhdhir Lalji 85 ITR 77(Guj) has held that if proceedings are initiated on charge of concealment then penalty cannot be levied on the charge of furnishing of inaccurate particulars of income and vice versa.
21. In CIT vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 (SC) held that where information given is not found to be incorrect, assessee cannot be held guilty of furnishing inaccurate particulars of income for the purpose of levying penalty u/s 271(1)(c). Further held that mere making a wrong claim does not amount to furnishing



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inaccurate particulars. In the absence of finding that any details supplied by assessee is incorrect or false, penalty cannot be levied.

22. In CIT Vs. Raj Trading Co. (1996) 217 ITR 208 (Raj.) explaining the difference between the two held that the words ‘furnishing inaccurate particulars of income’ refer to the particulars which have been furnished by an assessee of his income and the requirements of concealment of income is that income has not been declared at all or is not even been recorded in the books of accounts or in a particular case the concealment of the particulars of income may be from the books of accounts as well as from furnished.
23. Gujarat High Court in case of Mitsu Industries Ltd. vs. DCIT [2015-ITRV-HC-GUJ-015] has held that in absence of a clear cut finding by the AO as to whether it is case of concealment or furnishing inaccurate particulars then penalty could not be levied.
24. Mumbai ITAT Bench in case of Cenzar Industries Ltd, Mumbai vs Ito 5(1)(3), Mumbai (Mumbai ITAT) Dated 29 December, 2017 I.T.A No.1970/Mum/2015 held that that penalty proceedings initiated u/s 271(1)(c) is void ab initio and liable to be quashed as the AO has issued vague notice u/s 274 r.w.s. 271(1)(c) without striking off of irrelevant portion of notice which is a clear case of non-application of mind by the AO before initiation of penalty proceedings.
25. Mumbai ITAT Bench in case of Tata Communication vs Deputy Commissioner Of Income Tax, (Mumbai ITAT) Dated 21 February, 2018 ITA No.3108/M/2016 held that AO has issued printed form of notice without striking off irrelevant portion and also in the penalty order he does not specify under which charge M/s. Tata Communications Transformation Services Limited penalty has been initiated.
26. Delhi ITAT Bench in case of Rihim Pharma Consultancy (P) Ltd. vs. ITO (Delhi ITAT), Dated 23.03.2018 ITA No. 6103/DEL/2017 held that assessing officer while issuing notice has not specified as to whether there is a concealment of particulars of income or



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the assessee has furnished inaccurate particulars of income. Thus, the notice issued u/s 274 r.w.s. 271 of the act itself defective.

27. Kolkata ITAT Bench in case of Jeetmal Choraria vs. ACIT (ITAT Kolkata) ITA no. 1722-1724/Kol/2016, Dated 01.12.2017 held that if the show cause notice issued in the present case u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income. The show cause notice u/s 274 of the Act does not strike out the inappropriate words. These circumstances, we are of the view that imposition of penalty cannot be sustained.

OMISSION / NEGLIGENCE / BONAFIDE MISTAKE

Several judicial pronouncements on whether the omission / negligence / bonafide mistakes in the return of income or in any particulars of income would constitute the concealment of income are as under:

1. The Honourable Supreme Court in CIT vs. Bank Of Nova Scotia has held that penalty u/s 271(1)(c) for failure to deduct TDS cannot be levied if Dept is unable to show contumacious conduct on the part of the assessee
2. The Hon'able Supreme Court in CIT vs. Pricewaterhouse Coopers Pvt. Ltd. [2012-ITRV-SC-244] has held that there would be no s. 271(1)(c) penalty for a "bona fide/ inadvertent/ human error"
3. The Hon'able Supreme Court in In T. Ashok Pai vs. CIT (2007) 161 Taxmann 340 (SC) held that a mere omission or negligence does not constitute a deliberate act suppressio very (Concealment of truth).
4. Delhi High Court in the case of Principal Commissioner of Income Tax vs. Dr. Vandana Gupta ITA 219/2017 held that Assessee cannot absolved of penalty, if she or he offered an explanation which he is not able to substantiate and failed to prove that such



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explanation is bona fide and that all facts relating to same and material to computation of his total income have been disclosed by him.

5. Delhi High Court in the case of Principal Commissioner of Income Tax vs. American Express Pvt. Ltd on 27.08.2018 held that If conduct of assessee in netting of income received from interest paid is bona fide, then no penalty u/s.271(1) (c) can be imposed on assessee.
6. Delhi High Court in the case of Principal Commissioner of Income Tax vs. Sinosteel India Pvt. Ltd on 03.08.2018 held that Penalty u/s 271(1)(c) cannot be levied where the assessee establishes that the price charged or paid was computed as per provisions of Section 92C and assessee had acted in good faith and with due diligence.
7. Delhi High Court in the case of Principal Commissioner of Income Tax & ORS vs. Oriental Pathways (Nagpur) Pvt. Ltd & ORS on 28.08.2018 held that Penalty u/s 271(1)(c) is not leviable where the assessee's claim of depreciation was allowed in original assessment proceedings and in the return filed in response to notice u/s 153A, assessee made the claim under bonafide belief that depreciation is allowable.
8. Delhi High Court in CIT vs. Societex [2012-ITRV-HC-DEL-163] has held that there would be no s. 271(1)(c) penalty if wrong claim is caused by "bona fide mistake"
9. Delhi High Court in the case of CIT vs. Hari Machine 311 ITR 285 (Del.) held the assessee had reduced its share capital from 25 to 20 lakhs under the Companies Act and claimed deduction while computing income. AO disallowed the same and levied penalty. The court held that penalty is not leviable since all relevant material had been disclosed and there was no allegation of fraud or negligence for invoking explanation.
10. The Bombay High Court in CIT vs. Hiralal Doshi ITA No. 2331 of 2013 has held that penalty u/s 271 (1)(c) is not leviable on income declared during survey and offered in return. Law laid down in Mak Data 358 ITR 593 (SC) is distinguishable on facts and not universally applicable. A mere change of head of income does not attract penalty



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11. Punjab and Haryana High Court in the case of Principal Commissioner of Income Tax vs. S.S. Food Industries ITA No. 222 of 2015 held that once assessee disclosed all particulars of income and it could not be stated that assessee had concealed any particulars and furnished incorrect particulars
12. Mumbai High Court in CIT vs. Hans Christian Gass [2012-ITRV-HC-MUM-167] has held that ignorance of law caused by complicated provisions amounts to “bona fide belief”, no penalty is leviable u/s 271(1)(c).
13. Madras High Court in case of The Commissioner Of Income Tax vs D.Harindran on 10 July, 2018 ITA No. 360 of 2018 held that Making of an incorrect claim in law would not tantamount to inaccurate particulars.
14. Bombay High Court in case of CIT vs. Bennett Coleman & Co. Ltd [2013-ITRV-HC-MUM-030] has held that penalty u/s 271(1) (c) cannot be imposed when there was no desire on part of assessee to hide or conceal the income but it was an inadvertent mistake on part of assessee and when there is only change of head of income no penalty could be imposed.
15. Andhra Pradesh High Court in CIT vs. Sania Mirza [2013-ITRV-HC-AP-002] has held that there would be no s. 271(1)(c) penalty if income is not offered to tax due to “bona fide mistake”.
16. In CIT vs. Auric Investment 310 ITR 121 (Del.) held that if loss in shares was adjusted against income which was disallowed on the ground that it was speculative loss, penalty is not leviable since all material facts disclosed.
17. Madras High Court in case of CIT vs. Balaji Distilleries Ltd.(2003) 126 TAXMAN 264 (Mad.) has held that in absence of due care does not mean that the assessee is guilty of furnishing inaccurate particulars of income.



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18. Delhi ITAT bench in the case of *B. L. International vs. ACIT (ITAT Delhi) Dated 03.03.2016 ITA no. 1590/Del/2014* held that No penalty leviable on bonafide human error committed while filing return of income
19. Delhi ITAT bench in the case of *Harish Narinder Salve vs. ACIT (ITAT Delhi) I.T.A. No. 100/Del/2015 Dated 21.09.2017* Deferral of depreciation allowance does not result in concealment of income or furnishing of any inaccurate particulars. No penalty can be levied for a sheer accounting error of debiting loss incurred on sale of a fixed asset to the P&L A/c instead of reducing the sale consideration from the WDV of the block.
20. Delhi ITAT in the case of *Toscana Lasts Limited vs. ITO [2014-ITRV-ITAT-DEL-118]* has held that fact that assessee has huge carry forward losses and depreciation and filed a nil return suggests that there is no motive or incentive to make a bogus claim in the return, hence no penalty u/s 271(1)(c)
21. Delhi ITAT in the case of *M.s Mindmill Software Ltd. vs ITO in ITA No. 242/Del/2016 of ITAT Delhi Dated 10.02.2017* held that when the assessee has claimed any deduction by not concealing anything and in case the deduction has been disallowed by the AO and assessment order has been confirmed by the CIT (A) it does not amount to concealment of income or furnishing of inaccurate particulars
22. Delhi ITAT Bench in case of *Prafful Industries (P) Ltd vs. DCIT (ITAT Delhi) ITA NO. 4023/DEL/2016, dated 15.03.2018* held that once all the information were given in the return of income accompanied by relevant books maintained by assessee simple disallowance of depreciation will not amount to furnishing of inaccurate particulars.
23. Lucknow ITAT bench in case of *Pankaj Kumar Gupta vs. ITO (ITAT Lucknow) ITA No. 486/LKW/2016, Dated 16.01.2018* held that if in the return of income certain mistake is



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there, which is bona-fide and there is also no loss to the Revenue, then in the absence of any material on record, we cannot come to the conclusion that assessee has deliberately concealed the income or has furnished inaccurate particulars of income.

24. Mumbai ITAT bench in case of Govardhan G Vanani, Mumbai vs Dcit (Osd-I) Cen Rg 7 I.T.A No.269/Mum/2016 held that we are of the considered view that the claim made by the assessee is a bona fide claim and hence, the AO was erred in levying penalty u/s 271(1)(c) for furnishing inaccurate particulars of income. Hence, we direct the AO to delete penalty levied u/s 271(1)(c) of the Act.
25. Mumbai ITAT bench in the case of Times Guaranty Ltd. vs. ACIT [2014-ITRV-ITAT-MUM-198] held that wrong claim for depreciation by showing a finance or loan transaction as a lease transaction attracts penalty u/s 271(1)(c).
26. Mumbai ITAT bench in case of Shubhmangal Portfolio Pvt. Ltd vs. CIT [2015-ITRV-ITAT-MUM-160] has held that disclosing income but classifying it under a wrong head amounts to furnishing inaccurate particulars and attracts penalty u/s 271(1)(c).
27. Pune ITAT bench in case of Amruta Organics Pvt. Ltd. vs. DCIT [2013-ITRV-ITAT-PUNE-062] has held that consistent losses show mistake/ absence of intention to evade taxes, hence do not attract penalty u/s 271(1)(c)

DISALLOWANCE OF CLAIM

Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue that by itself would not, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the assessing officer for any reason, the assessee will invite penalty under Section 271(1)(c). Several judicial pronouncements on disallowance of claim by revenue are as under-



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1. Jammu and Kashmir High Court in the case of Principal Commissioner of Income Tax vs. Manzoor Ahmad Walvir ITA No. 04/2016 It is thus obvious that the respondent-assessee having furnished all the details of its expenditure as well as income in its return, it was upto the authorities to accept his claim or to reject it. But merely because the respondent-assessee had claimed an expenditure which was not accepted by the revenue, that by itself would not attract the penalty of Section 271(1)(c).
2. Calcutta High Court in the case of Paharpur Colling Towers Ltd. vs. Commissioner of Income Tax ITA 42 of 2006 held that Merely because assessee had claimed expenditure, which claim was not accepted or was not acceptable to Revenue, that by itself would not, attract penalty u/s 271(1)(c)
3. Agra ITAT Bench in the case of Farrukhabad Investment (India) Ltd vs. Deputy Commissioner of Income tax on 11.09.2018 ITA No. 141/Agra/2009 held that Penalty had been imposed with reference to disallowance of interest and commission expenses, It was not case of Revenue that assessee did not pay such interest/commission and claimed deduction thereof. Merely because certain disallowance of expenses had been made, could not itself justify imposition of penalty u/s 271(1)(c). Penalty was initiated on specific charge of 'furnishing inaccurate particulars of income', but penalty order was eventually passed with vague and uncertain default of 'furnishing of inaccurate particulars/concealment of income'. CIT(A) was not justified in confirming penalty imposed in respect of disallowance of interest and commission.
4. Delhi ITAT Bench in the case of Perfect Homfin Pvt Ltd. vs. Deputy Commissioner of Income Tax ITA No.5721/Del./2014 held that When AO himself allowed commission having been paid to Person merely disallowing commission payment on basis of subjective satisfaction without calling upon assessee as to what type of advice and know-how had been provided by persons of 20 years of age to earn business income on which tax had already been paid, penalty could not be imposed nor it amount to furnishing of inaccurate particulars



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5. Delhi ITAT Bench in the case of Deputy Commissioner of Income Tax vs. National Textile Corporation Ltd. ITA No. 2416/Del/2014 held that Where assessee had furnished all details of Its expenditure as well as income in its return then merely because assessee had claimed expenditure, which claim was not accepted or was not acceptable to Revenue, that by itself would not attract penalty u/s.271(1)(c).
6. Indore ITAT Bench in the case of Fortune Builders vs. Assisstant Commissioner of Income Tax on 18.10.2018 ITA No.82 to 84/Ind/2017 held that Assessee claimed deduction u/s. 80IB(10) for reason that project approval certificate was filed and possession delivered, may-be technical formality of obtaining completion certificate was not satisfied, but, it would-not mean that assessee had claimed incorrect or false deduction. Mere non-satisfaction of condition of deductions would not mean that assessee had furnished incorrect return, which would make it liable for penalty. Lower authorities erred in levying penalty u/s. 271(1)(c) for disallowance of deduction u/s. 80IB(10) merely on technical ground
7. Bombay ITAT Bench in the case of Robust Transportation Private Limited vs. Deputy Commissioner of Income Tax on 23.08.2018 I.T.A. No. 3195/Mum/2018 held that Disallowance of a claim made by the assessee or a wrong claim by the assessee cannot by itself lead to levy of penalty u/s. 271(1)(c) of the Act
8. Bombay ITAT Bench in the case of Assistant Commissioner of Income Tax vs. Wire and Wireless Tisai satellite Ltd. I.T.A No.09/Mum/2016 held that If expenditure is disallowed due to failure to deduct TDS or late deposit of TDS, then no penalty could be leviable u/s. 271(1)(c) on ground that disallowance should at most a technical default and there being nothing to indicate any concealment of income.
9. Bombay ITAT Bench in the case of NSE IT Ltd. vs. Deputy Commissioner of Income Tax ITA No. 5935/Mum/2014 held that Every legal claim which was filed and which was not allowed by Revenue did not automatically lead to levy of penalty u/s 271(1)(c).



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10. Ahmedabad ITAT Bench in the case of BIL Metal Industries Ltd. vs. Deputy Commissioner of Income Tax ITA No. 2075/Ahd/2014 held that where, disallowance is merely on account of difference of opinion and has nothing to do with concealment of income or furnishing of inaccurate particulars then, mere disallowance in assessment proceedings cannot be sole basis for levying penalty

AGREED / ESTIMATED ADDITIONS

If the additions made by the AO had been accepted by the assessee and he has not disputed the same in the appeal, whether such acceptance of addition leads to the concealment of income. Some of the judicial pronouncements of the same issue are as under:

1. Supreme Court in case of Sir Shadilal Sugar Mills (168 ITR 705) held that there may be a hundred and one reasons for not protesting and agreeing to an addition but that does not follow to the conclusion that the amount agreed to be added was concealed income. Indeed, there may be numerous reasons with the tax payer for not approaching the first appellate authority for justice, for example the following:
 - a. To avoid the pains of further litigations, numerous hearings and mental tensions borne in it;
 - b. The risk of enhancement at the first appellate authority on various technical issues;
 - c. Nowadays commonly seen attitude of assessment in Appellate proceedings
 - d. Heavy litigation cost of Representatives
 - e. Withdrawn of appeal at instance of Assessee is the discretion of Appellate authority
2. Honorable Supreme Court in CIT vs. Mak Data Ltd. vs. CIT [2013-ITRV-SC-140] has held that under Explanation 1 to s. 271(1)(c), *voluntary disclosure* of concealed income does not absolve assessee of s. 271(1)(c) penalty if the assessee fails to offer an explanation which is bona fide and proves that all the material facts have been disclosed.



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3. Madras High Court explaining CIT vs. Mak Data Ltd. vs. CIT [2013-ITRV-SC-140] in CIT vs. Gem Granites [2013-ITRV-HC-MAD-157] has held that s. 271(1)(c) penalty cannot be levied if the assessee discharges the primary burden by a cogent explanation and the AO is unable to rebut it.
4. Karnataka High Court in case of CIT v. Manjunatha Cotton & Ginning ITA No.1307/Bang/2003 [2013-ITRV-HC-KAR-093] has held that even if the assessee has not challenged the order of assessment levying tax and interest and has paid the same, that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by authorities which has resulted in payment of such tax or such tax liability came to be admitted, and if not, it would have escaped from tax net as opined by the Assessing Officer in the assessment order.
5. Delhi ITAT Bench in the case of R.K Panda, AM & Suchitra Kamble, JM ITA No.4441/Del/2015 held that Since bills and vouchers produced in instant case were not proved to be false or untrue, and assessee was agreeable to produce parties concerned before AO but at same time agreed for addition, it was not fit for levy of penalty u/s 271 (1)
6. Mumbai ITAT bench in the case of Deloitte consulting India Pvt. Ltd. vs. ACIT [2014-ITRV-ITAT-MUM-120] has held that giving up of a bogus claim for deduction to eschew inquiry by AO/ TPO is not voluntary and bona fide and attracts levy of penalty u/s 271(1)(c).
7. The Karnataka High Court in CIT vs. Manjunatha Cotton & Ginning Factory [2013-ITRV-HC-KAR-093] has held that no s. 271(1)(c) penalty is leviable in a case where assessee agreed to additions to buy peace.



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8. It was held in following cases that agreed addition to income to purchase peace cannot amount to an admission constituting evidence of concealment in penalty proceedings:-

- CIT V. Girish Devchand Rajani [2013] 33 taxmann.com 174 (Gujarat)
- CIT v. M.M. Gujamgadi (2007) 162 Taxmann 211 (KAR.)
- CIT vs. Punjab Tyres (1986) 162 ITR 517 (MP)
- CIT vs. Jaswant Rai (1997) 142 CTR (P&H) 49
- CIT vs. Mecon Builders & Engineers (2001) 248 ITR 159 (Del)

9. In following cases it was held that penalty u/s 271(1)(c) could not be levied where addition has been made on estimate basis:

- Surat Fashions Ltd. vs. ACIT [2011-ITRV-ITAT-AHD-124]
- Narayansingh J. Deora vs. ACIT 2011-ITRV-ITAT-MUM-283

MATTER DEBATABLE

It has been held by various courts that where the matter is debatable, there is no concealment or inaccurate particulars to impose penalty u/s 271(1)(c). Few judicial pronouncements on the same are as under:

1. The Delhi High Court in CIT vs. Liquid Investment & Trading Co. [2013-ITRV-HC-DEL-025] has held that that where High Court has accepted substantial question of law u/s 260A, this itself shows that issue is debatable. Accordingly, no penalty was imposable u/s 271(1)(c) of the Income-tax Act, 1961.
2. Bombay High Court in the case of Director of Income Tax vs. Koninklijke-DSM-NV held that It was settled position of law that where issue was debatable then mere making of claim on basis of particular interpretation would not lead to imposition of penalty. Bearing in mind that for earlier assessment years Respondent Assessee had claimed and



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been granted refund of taxes deducted at source by affiliated companies in respect of payment received by it for Corporate Services and CICT Services would also establish that claim made by Respondent Assessee that income received was not chargeable to tax was bonafide claim. On facts there was concurrent finding of there being no concealment of income or furnishing inaccurate claim of income. Concurrent finding of fact by CIT(A) and Tribunal did not give rise to any substantial question of law

3. The Bombay High Court in the case of CIT vs. M/s Nayan Builders and Developers ITA No.415/2012 [2011-ITRV-ITAT-MUM-087] held that the Mere admission of Appeal by High Court is sufficient to debar s. 271(1)(c) penalty.
4. Delhi ITAT Bench in case of Hero Honda Motors Ltd. vs. DCIT [2011-ITRV-ITAT-DEL-118] it was held that no penalty could be levied where question of law is being admitted in the High Court and also where the issue is debatable in nature which leads to constitution of Special Bench.
5. Bombay ITAT Bench in the case of Parinee Developers Pvt Ltd. Vs. Assistant Commissioner of Income Tax ITA No. 6772/M/2013 held that When it was case of change of head of income and CIT (A) attempted to tax it u/s 56, such issue would be debatable in nature, as there was no default of disclosure or furnishing of inaccurate particulars in this case relating to this issue and addition on account of interest income did not invite levy of any penalty u/s 271(1)(c).
6. Mumbai ITAT bench in the case of Salman Khan vs. ACIT [2014-ITRV-ITAT-MUM-149] I.T.A. No. 3064-3066/Mum/2016 held that relief by CIT(A) on merits (though reversed by ITAT) means claim is debatable and there would be no penalty u/s 271(1)(c).
7. Mumbai ITAT Bench in case of Schrader Duncan Limited vs. ACIT [2015-ITRV-ITAT-MUM-077] has held that when the addition the basis of which the penalty was imposed has become doubtful/debatable, penalty imposed u/s 271(1) (c) of the Act cannot survive.



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REVISED RETURN

If the assessee had in its revised return or during the course of assessment proceedings discloses the additional income, whether penalty would be leviable on such disclosure of additional. Certain judicial pronouncements on this issue are as under:

1. Delhi High Court in the case of *Principal Commissioner of Income Tax vs. Neeraj Jindal* ITA 463/2016, 464/2016, 465/2016, 466/2016 & CM No. 26604/2016, 26605/2016, 26606/2016 held that A.O. has accepted the revised return filed by the assessee under Section 153A, no occasion arises to refer to the previous return filed under Section 139 of the Act. For all purposes, including for the purpose of levying penalty under Section 271(1)(c) of the Act, the return that has to be looked at is the one filed under Section 153A
2. Calcutta High Court in the case of *Commissioner of Income Tax vs. Arun Kumar Khetwat* 02.12.2015 held that where revised return for the said assessment year was filed by the assessee before issuance of notice under s 148, the order of Tribunal setting aside penalty imposed u/s 271(1)(c) required no interference.
3. Delhi ITAT Bench in the case of *Sanjeev Kumar vs. Assistant Commissioner of Income Tax* on 17.09.2018 ITA.No.2871/Del./2018 held that Assessee correctly filed return of income after issue of notice u/s. 153A within time allowed under that Section. Deeming provisions of Explanation 5A could not be applied because at time of search for relevant previous year under appeal, due date of filing of return of income had not expired. Explanation 5A to Section 271(1)(c) was not applicable to facts and no penalty could have been levied by CIT(A). Once, penalty proceedings were rightly initiated by AO u/s.271AAB, there was no question of levy of penalty u/s.271(1)(c) against assessee. Order of CIT (A) for levy of penalty u/s. 271(1)(c) was invalid and void in law.



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4. Delhi ITAT Bench in case of ACIT vs. Ashok Raj Nath [2015-ITRV-ITAT-MUM-129] has held that when the assessee voluntarily disclosed additional income in the course of assessment proceedings and paid tax thereon and revenue has not placed any material that assessee wants to conceal his income, there is no basis for imposition of penalty.
5. Chandigarh ITAT Bench in the case of Prabhjit Singh Sidhu vs. Assistant Director of Income Tax ITA No. 909/CHD/2015 held that where revised return has been regularized by the Revenue and the explanation of the assessee for declaring additional income in the said return found to be bonafide, there is no case for levy of penalty u/s 271(1)(c).
6. Punjab High Court in case of CIT vs. Suraj Bhan [2007] 159 Taxman 26 has held that penalty could not be imposed when assessee has filed revised return showing higher income and give explanation that higher income was offered to buy peace of mind and to avoid litigation.
7. Karnataka High Court in case of CIT vs. Vega Auto Accessories (P) Ltd. ITA No.5014 to 5016/2011 has held that levy of penalty is not justified when the revised return was filed before issue of notice under section 148.
8. Karnataka High Court in CIT vs. Sangameshwara Associates [2012-ITRV-HC-KAR-118] held that despite offer of income in s. 148 return of income, s. 271(1)(c) penalty is leviable.
9. Delhi High Court in CIT vs. Usha International Ltd. [2012-ITRV-HC-DEL-274] has held that surrender via revised Return of Income before issue of formal notice does not necessarily avoid s. 271(1)(c) penalty.
10. The Gujarat High Court in LMP Precision Engg. Co. Ltd. v. Dy. CIT (Asstt.) [2011] 330 ITR 93 has held that if the return is revised that fact by itself cannot lead to any presumption as to concealment in the original return of income, because legislature itself has provided for furnishing a revised return in case of any omission in the original return.



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Albeit such omission has to be inadvertent and bona fide. If the omission is intentional, the revised return cannot absolve an assessee.

11. Delhi ITAT bench in case of M/S. Ose Infrastructure Ltd., vs Acit, New Delhi on 14 August, 2018 ITA Nos.5891 to 5895/Del/2016 held that when the revised return is accepted and the income is assessed as per the revised income, there is no scope for penalty.
12. Indore ITAT in Radheshyam Sarda & Ors vs. ACIT [2012-ITRV-ITAT-IND-187] has held that penalty u/s 271(1)(c) cannot be levied even if revised return of income is filed after detection but before issue of notice u/s. 148
13. Mumbai ITAT in ITO vs. Gope M. Rochlani [2013-ITRV-ITAT-MUM-119] has held that undisclosed income offered in belated return filed u/s 139(4) is eligible for immunity from penalty under Explanation 5 to s. 271(1)(c)

ADDITIONS RESULTING IN TAX PAYMENT U/S 115JB

A question arises that if during the assessment additions are made resulting in increase in tax payable u/s 115JB i.e., Minimum Alternative Tax (MAT) then can penalty u/s 271(1)(c) be levied. Certain judicial pronouncements on this issue are as under:

1. Ranchi ITAT Bench in the case of Deputy Commissioner of Income Tax & Anr vs. Usha Martin Limited ANR ITA Nos.185 to 187/Ran/2016 held that Merely because explanations or contention of assessee were not accepted, there was no conclusive ground for levy of penalty. In case of Nalwa Sons Investment Ltd, it was held that when tax payable on income computed under normal procedure was less than tax payable under deeming provisions of Section 115JB, then penalty u/s. 271(1)(c) could not be imposed with reference to additions /disallowances made under normal provision



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2. Mumbai ITAT in Ruchi Strips & Alloys Ltd. vs. DCIT [2011-ITRV-ITAT-MUM-095] held that despite concealment, no s. 271(1)(c) penalty if assessment is under deeming provision of s. 115JB book profits.
3. Hon'able Supreme Court in CIT v. Nalwa Sons Investments Ltd [2012-ITRV-SC-098] held that the Sec- 115JB "book profits" were by a legal fiction deemed to be the "total income", the furnishing of wrong particulars had no effect on "the amount of tax sought to be evaded" as defined in Explanation 4 to s. 271(1)(c). No penalty was leviable.

However, the Finance Act, 2015 has amended the Sec 271(1)(c) and added Explanation 4 which defines the tax sought to be evaded and prescribe the formula for calculating the amount of tax sought to be evaded and such formula duly takes into account the additions made of deemed income u/s 115JB. Thus if there is addition of deemed income u/s 115JB and such addition of income is because of concealment of income or furnishing of inaccurate particulars of income, then penalty shall be leviable u/s 115JB.

ADDITION UNDER DEEMING PROVISIONS

There are various deeming provisions like s. 50C, 14A, 2(22)(e), etc. Will addition made such deeming provisions amount to concealment of income by the assessee in his return? Certain judicial pronouncements on this issue are as under:

1. Ahmedabad ITAT Bench in the case of Kantibhai Mohanbhai vs. Assistant Commissioner of Income Tax ITA No. 1831/Ahd/2014 held that addition was made totally by invoking provision contained in section 50C, therefore, penalty cannot be imposed on income determined on basis of deeming provision of section 50C as this solitary does not lead to concealment of income or furnishing of inaccurate particulars of income, therefore, court find CIT was not justified in sustaining penalty levied by AO



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2. The Mumbai ITAT in ACIT vs. Sunland Metal Recycling [2015-ITRV-ITAT-MUM-083] has held that even if s. 50C is applicable, computing capital gain de hors it does not amount to furnishing inaccurate particulars of income or concealment of income for levy of penalty u/s 271(1)(c).
3. In DCIT v. Nalwa Investments Ltd [2011-ITRV-ITAT-DEL-114] it was held that there would be no s. 271(1)(c) penalty for failure to disallow u/s 14A.
4. It was held in following cases that even if s. 50C is applicable, computing capital gain de hors it does not amount to furnishing inaccurate particulars of income or concealment of income for levy of penalty u/s 271(1)(c):-
 - a. *Renu Hingorani Vs. ACIT(ITAT Mum) [2011-ITRV-ITAT-MUM-094]*
 - b. *Chimanlal Manilal Patel vs. ACIT (ITAT Ahmedabad)[2012-ITRV-ITAT-AHD-142]*
 - c. *CIT Vs. Madan Theatres Ltd (Cal HC) [2013-ITRV-HC-KOL-073]*
 - d. *CIT vs. Fortune Hotels and Estates Pvt. Ltd [2014-ITRV-HC-MUM-183]*

PROFESSIONAL ADVICE

There are conflicting judgments that if mistake is committed due to professional advice the penalty cannot be levied. Some of them are:

1. Madras High Court in the case of Principal Commissioner of Income Tax vs Smidth Limited ITA No. 440 of 2017 held that Where bonafide inadvertent error by Chartered Accountant had occurred in failing to note ceiling in respect of amount credited by Assessee to Foreign Projects Reserve Account while computing deduction under Section 80HHB of the IT Act, same did not warrant penalty proceedings much less mulcting the Assessee with penalty under Section 271(1)(c) of the IT Act



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2. The Punjab & Haryana High Court in Pr. CIT vs. Atotech India Ltd ITA-347-2015 (O&M) has held that S. 271(1)(c) penalty cannot be levied in a case where the assessee has relied on legal opinion of a professional and there is no tax impact i.e. the loss disallowed in year one is allowed set-off in a later year
3. Mumbai High Court in CIT vs. Somany Evergreen Knits Ltd [2013-ITRV-HC-MUM-041] has held that there would be no penalty u/s 271(1)(c) if wrong claim made is due to mistake/ wrong advice of CA.
4. Delhi High Court in CIT vs. HCIL Kalindee ARSSPL [2013-ITRV-HC-DEL-110] has held that s. 271(1)(c) penalty is valid even if claim is disclosed and as per CA certificate.
5. In Chadha Sugars Pvt. Ltd. vs. ACIT [2012-ITRV-ITAT-DEL-009] it was held that CA's opinion does not necessarily make claim "bona fide" and penalty can be levied u/s 271(1)(c).
6. Delhi ITAT Bench in the case of Oxford Softech Pvt.Ltd. vs. Income Tax Officer ITA No.5100/Del/2011 held that Assessee acted under guidance and advice of Chartered Accountant hence assessee was under bonafide belief that it was entitled to claim for deduction under provisions of s.80 IA hence it could not be said that this was case of furnishing of inaccurate particulars of income
7. Kolkata ITAT Bench in the case of Jayanta Saha vs. Deputy Commissioner of Income Tax I.T.A. No. 106/Kol/2018 held that There was delay of around 1330 days in filing appeal by assessee against order of AO because of wrong advice of advocate. CIT(A) upheld order of AO holding assessee's appeal as rectification/revision application and passed rectification order. held, in case of Collector of Land Acquisition vs Mst Katiji & Others, it was held that substantial justice should prevail over technical consideration. Litigant did not stand to benefit by lodging appeal late, every day's delay must be explained did not mean that pedantic approach should be taken doctrine must be applied in rational, common sense and pragmatic manner. Wrong advice given by advocate of assessee caused assessee in not



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preferring appeal before Tribunal, Therefore, assessee could not be faulted for not preferring appeal on time.

8. The Kolkata ITAT (Third Member) in *Darwabshaw B Cursetjee Sons Ltd vs. ITO [2012-ITRV-ITAT-KOL-149]* held that Professional's opinion in support of claim does not per se make it bona fide, penalty leviable u/s 271(1)(c).
9. Mumbai ITAT bench in the case of *ACIT vs. Cecilia Haresh Chaganlal ITA No.2661/Mum/2013 [2014-ITRV-ITAT-MUM-241]* held that when bona fide mistake was committed on advice of CA is a reasonable one as per Explanation 1B of s. 271(1) and does not attract penalty u/s 271(1)(c).

OTHER PRONOUNCEMENTS

Few other judicial pronouncements on section 271(1)(c) are as follows:

1. The Hon'ble Supreme Court of India in the case of *Commissioner of Income Tax vs. Shree Chowatia Tubes (India) (P) Ltd. Civil Appeal No.3544 of 2007* held that penalty could be levied even if no tax was payable on total income assessed and court analysed nature of amendment to conclude whether it was in reality clarificatory or declaratory provision—Tribunal was not right in cancellation of penalty under Section 271 (1) (c) of the Income Tax Act, 1961 merely on ground that no penalty could be levied if returned income and assessed income was loss under Section 271 (1) (c) of the Income Tax Act, 1961 in as much as this amendment had been held to be retrospective in operation
2. Gujarat High Court in case of *Amrut Tubewell Company vs. ACIT [2015-ITRV-HC-GUJ-042]* has held that once CIT(A) having deleted certain amount and remanded the matter in respect of other amount for verification, the AO could not have relied on the same to impose penalty u/s 271(1)(c).



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3. Bombay High Court in case of CIT vs. Fortune Hotels and Estates Pvt. Ltd. [2014-ITRV-HC-MUM-183] has held that penalty u/s 271(1)(c) could not be imposed when the documents was forwarded to valuer and the determination of the value by itself would not mean that the assessee had furnish inaccurate particulars of income or has conceal his income.
4. The Bombay High Court in Maharaj Garage & Company vs. CIT ITA No. 21 of 2008 has held that the requirement to obtain previous approval of the IAC is mandatory as it is to safeguard the interests of the assessee against arbitrary exercise of power by the AO. Non-compliance may vitiate the penalty order u/s 271(1)(c). However, the requirement in s. 274 that the assessee must be given a reasonable opportunity of being heard cannot be stretched to the extent of framing a specific charge or asking the assessee an explanation in respect of the quantum of penalty proposed to be imposed
5. The Delhi High Court in Pr. CIT vs. Fortune Technocomps (P) Ltd has held that if the assessment order in the quantum proceedings is altered by an appellate authority in a significant way (on bogus purchases), the very basis of initiation of the penalty proceedings is rendered non-existent and the AO cannot continue the penalty proceedings u/s 271(1)(c) on the basis of the same notice
6. The Delhi ITAT in Oxford Softech P.Ltd vs. ITO has held that Income-tax provisions are highly complicated and it is difficult for a layman to understand the same. Even seasoned tax professionals have difficulty in comprehending these provisions. Making a claim for deduction u/s S.80 IA which has numerous conditions is a complicated affair & cannot attract penalty u/s 271(1)(c)
7. Delhi ITAT Bench in the case of Deputy Commissioner of Income Tax vs. American Express India Pvt. Ltd ITA No. 4422/Del./2014 held that Where interest receipt from department on income tax refund, does not have any direct nexus with business of assessee, it cannot be netted off with other interest payment thus it cannot be concluded that assessee furnished any inaccurate particulars of income so as to warrant levy of penalty u/s 271(1)(c) .



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8. ITAT Hyderabad in the case of KEI Rsos Maritime Ltd. vs. DCIT [2011-ITRV-ITAT-HYD-121] it was held that penalty u/s 271(1)(c) could not be levied where addition has been deleted in quantum appeal.
9. Mumbai ITAT in Dynatron Pvt. Ltd. vs. DCIT [2013-ITRV-ITAT-MUM-077] I.T.A. No. 2415/Mum/2011 has held that there would be no S. 271(1)(c) penalty for s. 40(a)(i) disallowance if TDS deducted next year.

I hope this document would be of use to you. I thank **Advocate Mukul Gupta** and **Ms. Rashika** for helping me in compiling this document.

Best Regards

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(Disclaimer: Though full efforts have been made to state the interpretations and case laws correctly, yet the author is not responsible / liable for any loss or damage caused to anyone due to any mistake / error / omissions)