

PENALTY U/S 271(1)(c)



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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.

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. Honorable 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.
2. Full Bench of 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.



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3. 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.
4. 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.
5. 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.
6. Bombay High Court in case of *CIT vs. Rucha Engineers Pvt. Ltd. [2015-ITRV-HC-MUM-025]* has 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.
7. 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.
8. In *CIT vs. MTNL Ltd [2011-ITRV-HC-DEL-231]* it was held that there can be no penalty u/s 271(1)(c) without AO's finding on "Inaccurate Particulars".
9. Allahabad High Court in *CIT vs. Triveni Engineering & Industries Ltd [2014-ITRV-HC-ALL-109]* has 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



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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 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. 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.
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”



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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.

3. Delhi ITAT Bench in case of *Poysha Goyal vs. ACIT [2015-ITRV-ITAT-DEL-012]* has held that no penalty u/s 271(1)(c) could be imposed when all 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.
4. Mumbai ITAT Bench in case of *DCIT vs. Genesys International Corporation Ltd. [2012-ITRV-ITAT-MUM-268]* 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.
5. 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.
6. 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.
7. 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.
8. 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



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

9. 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.
10. 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.
11. In *CIT vs. Hari Machine 311 ITR 285 (Del.)* 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.

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. Honourable 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”
2. 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).



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3. 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”
4. 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).
5. Delhi ITAT in *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)
6. 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.
7. 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”.
8. 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).
9. Delhi ITAT Bench in case of *Toscana Lasts Limited vs. ITO [2014-ITRV-ITAT-DEL-118]* has held that assessee has huge carry forward losses and deprecation and filed a nil return suggest that there is no motive or incentive to make a bogus claim in the return, hence no penalty u/s 271(1)(c).



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10. 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.
11. Mumbai ITAT in *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).
12. Pune ITAT in *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)

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



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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.
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. 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).
6. 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.
7. 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:-



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- 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)

8. 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. Mumbai ITAT bench in the case of *Salman Khan vs. ACIT [2014-ITRV-ITAT-MUM-149]* 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).
2. 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.
3. In *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.



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4. The Delhi High Court in *CIT vs. Liquid Investment & Trading Co. [2013-ITRV-HC-DEL-025]* has held 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.
5. The Bombay High Court in the case of *CIT vs. M/s Nayan Builders and Developers held ITA No.415/2012 [2011-ITRV-ITAT-MUM-087]* that the Mere admission of Appeal by High Court is sufficient to debar s. 271(1)(c) penalty.

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 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 place any material that assessee want to conceal his income there is no basis arises for imposition of penalty.
2. 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.
3. 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.



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4. 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
5. 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.
6. 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. Albeit such omission has to be inadvertent and bona fide. If the omission is intentional, the revised return cannot absolve an assessee.
7. 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
8. 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:



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1. 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.
2. Honourable 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. 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).
2. 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.



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3. 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. 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.
2. 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.
3. 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).
4. 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).
5. 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



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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. 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).
2. In *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
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. Mumbai ITAT in *Dynatron Pvt. Ltd. vs. DCIT [2013-ITRV-ITAT-MUM-077]* 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 Harshit Arora in assisting me in compiling this document.

Best Regards

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