Section 271AAB: Penalty where search has been initiated.

Section 271 AAB as per Bare Act

(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,-

(*a*) a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year, if such assessee-

(*i*) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;

(*ii*) substantiates the manner in which the undisclosed income was derived; and

(*iii*) on or before the specified date-

(*A*) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(*B*) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

(*b*) a sum computed at the rate of twenty per cent of the undisclosed income of the specified previous year, if such assessee-

(i) in the course of the search, in a statement under sub-section (4) of section 132, does not admit the undisclosed income; and

(ii) on or before the specified date-

(*A*) declares such income in the return of income furnished for the specified previous year; and

(*B*) pays the tax, together with interest, if any, in respect of the undisclosed income;

(*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*).

(1A) 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 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,-

(a) a sum computed at the rate of thirty per cent of the undisclosed income of the specified previous year, if the assessee-

(i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;

(ii) Substantiates the manner in which the undisclosed income was derived; and

(iii) On or before the specified date-

(A) Pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

(b) a sum computed at the rate of sixty per cent of the undisclosed income of the specified previous year, if it is not covered under the provisions of clause (a).]

(2) No penalty under the provisions of [section 270A or] clause (*c*) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1) [or sub-section (1A)].

(3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.

Explanation.-For the purposes of this section,-

(*a*) "**specified date"** means the due date of furnishing of return of income under sub-section (1) of section 139 or the date on which the period specified in the notice issued under section 153A for furnishing of return of income expires, as the case may be;

(*b*) "**Specified previous year"** means the previous year-

(*i*) which has ended before the date of search, but the date of furnishing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the date of search; or

(*ii*) in which search was conducted;

(*c*) "**Undisclosed income" means**-

(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery 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.

Important conditions for Section 271AAB

The important conditions while imposing penalty under section 271AAB .

(i) The penalty under section 271AAB is ***discretionary and is neither automatic nor mandatory*** as it uses the words "AO may direct".

(ii) The discretionary penalty under section 271AAB(1A) can be levied under clause (a) @ 30% and under clause (b) @60% depending upon the default and charge against the assessee.

(iii) Existence ***of 'undisclosed income' is a sine quo non for levying such penalty***, which is defined in explanation (c) to section 271AAB.

Penalty under section 271AAB is discretionary, thus, it is neither automatic nor mandatory

While enacting Section 271AAB, the Legislature has consciously used the word 'may' in place of word 'shall' in the opening lines of Section 271AAB of the Act. The choice of the expression 'may' and not 'shall' in the opening Section of 271AAB shows that the Legislature did not intend to make the levy of penalty statutory, automatic and binding on the AO but the AO has been provided with ample discretion in the matter of levy of penalty.

Also, as per sub-section (3) of section 271AAB the provisions of section 274 and 275 as far as may be applied in relation to the penalty referred in this section which means that before imposing the penalty under section 271AAB, the AO has to issue a show cause notice and give a proper opportunity of hearing to the assessee.

Thus, the levy of penalty under section 271AAB is not automatic but the A.O. has to take a decision to impose the penalty after giving a proper opportunity of hearing to the assessee. It is statutory requirement that the explanation of the assessee for not fulfilling the conditions as prescribed under section 271AAB of the Act is required to be considered by the AO and in the cases where the explanation furnished by the assessee is bonafide and non-compliance of the provisions of section 271AAB is due to the reason beyond the control of the assessee, then in those cases penalty will not be levied. Therefore, the penalty under section 271AAB is not a consequential act but the AO has to first initiate proceedings by issuing a show cause notice and after considering the explanation and reply of the assessee has to take a decision whether in the given facts and

circumstances he should initiate penalty proceedings or not. The requirement of giving an opportunity of hearing before initiating the penalty, makes it clear that the penalty under section 271AAB is not mandatory but the AO has to take a decision based on the facts and circumstances of the case otherwise there is no requirement of issuing any notice for initiation of proceedings. Even the quantum of penalty leviable under section 271AAB(1A) is also subject to the condition prescribed under clauses (a) to (b) of sub-section (1A) and the AO has to again give a finding for levy of penalty @ 30% or 60% of the undisclosed income. ***Thus, the AO is bound to take a decision as to what default is committed by the assessee and which particular clause of section 271AAB(1A) is attracted on such default. Mere disclosure of income under section 132(4) would not ipso facto take the character of undisclosed income but the facts of each case are required to be analyzed in objective manner so as to attract the penalty provisions of section 271AAB of the Act***.

Judicial Pronouncements

ACIT v. M/s. Marvel Associates, ITAT Visakhapatnam

The question whether levy of penalty under section 271AAB by the AO is mandatory or discretionary has been considered by Visakhapatnam Bench of Tribunal in para 5 to 7 as under :-

In this case, it is argued that the A.O. has levied the penalty under the impression that the levy of penalty in the case of admission of income under section 132(4) is mandatory.

It is further stated that penalty under section 271AAB of the Act is not mandatory but discretionary. The provisions of section 271AAB of the Act are pari-materia with that of section 158BFA of the Act relating to block assessment and accordingly argued that the levy of penalty under section 271AAB is not

mandatory but discretionary. When there is reasonable cause, the penalty cannot be levied. The words used in section 271AAB of the Act and the words used in section 158BFA(2) of the Act are identical. Hence, the penalty section 271AAB of the Act penalty is not automatic and it depends on the merits of each case.

Undisclosed income' is a sine quo non for levying penalty

Finding or unearthing of undisclosed income in the course or as a result of search conducted under section 132 of the Act is sine qua non for invoking penal provisions of section 271AAB of the Act. Discovery and consequent assessment of undisclosed income is a condition precedent for levy of penalty under section 271AAB of the Act. It has to be borne in mind that every offer of the assessee to pay tax on his or her income in the course of recording of statement under section 132 does not amount to finding of 'undisclosed income'. A mere offer or disclosure by an assessee to pay tax on some additional amount with a view to avoid litigation cannot and does not amount to discovery of undisclosed income for the purposes of levy penalty under section 271AAB of the Act. The Legislature has all along been conscious in providing for levy of penalty only in respect of "undisclosed income".

In all penal provisions such as Section 271AAA & Section 271AAB, the Legislature has restricted the scope of penal provision only to "undisclosed income" and not assessed total income. Moreover, the expression 'Undisclosed Income' has been given a definite and specific meaning and the word has not been described in an inclusive manner so as to enable the tax authorities to give wider or elastic meaning which enables them to bring within its ambit the species of income not specifically covered by the definition. From bare perusal of the definition of the word "undisclosed income" it can be found that in order to bring a receipt of income within the meaning of the said expression, it is obligatory for the AO to demonstrate and prove that the income is represented either wholly or

partly by any money, bullion, jewellery or other valuable article or thing found in the course of search under section 132 and which was not recorded on or before the date of search in the books of accounts or other documents maintained in the normal course relating to such previous year or otherwise not disclosed before the date of search.

ACIT v Kanwar Sain Gupta, Kolkata, ITA No.538/Kol/2017 dated 29.06.2018

In this case, the assessee had voluntarily offered sum of Rs.1,00,00,000/- to tax in his statement under section 132(4) without any proof of concealment. The AO assessed such sum to tax solely based on the assessee's disclosure petition and there was no material brought on record to indicate that it was represented by any valuable asset or any entry found in any books or other documents seized in the course of search. The AO thereafter levied penalty under section 271AAB @ 10% which was deleted by Ld. CIT(A).

On appeal, the Tribunal upheld the order of Ld. CIT(A) by observing as under: "There is no material in the case file to indicate that the assessee 's undisclosed income represents any money, bullion, jewellery or valuable article or any entry in the books or other documents therein. Also, while dealing with penalty provisions the same is to be strictly interpreted. Thus, the CIT(A) had rightly deleted the impugned penalty as the assessee 's search statement nowhere indicated the corresponding undisclosed income which is the specific requirement in the Act for the imposition of penalty.

In case of **ACIT Vs Marvel Associates, ITAT Vishakhapatnam**, it was held vide para 9 that "Penalty under section 271AAB attracts on undisclosed income but not on admission made by the assessee under section 132(4). The AO must establish that there is undisclosed income on the basis of incriminating material.

In the instant case, a loose sheet was found according to the A.O., it was incriminating material evidencing the undisclosed income. In the penalty order the AO observed that loose sheet shows the cost per square feet is Rs.3571/- per sft. and assessee stated to have submitted in sworn statement cost per sq. feet at Rs.2200/- to Rs.2300/- per sq. feet. However, neither the AO nor the Ld.CIT(A) has verified the cost of construction with the books and projections found at the time of search. Thus, there is no evidence to establish that projections reflected in the loose sheet are real. Also, no other material was found during the course of search indicating the undisclosed income. There was no money, bullion, jewellery or valuable article or thing or entry in the books of accounts or documents transactions were found during the course of search indicating the assets not recorded in the books of accounts or other documents maintained in the normal course, wholly or partly. The revenue did not find any undisclosed asset, any other undisclosed income or the inflation of expenditure during the search/ assessment proceedings. Though a loose sheet was found that does not indicate any suppression of income but it is only projection of profit statement. The AO was happy with the disclosure given by the assessee and did not verify the factual position with the books of accounts and projections and bring the evidence to unearth the undisclosed income. Therefore, the contention of the revenue that the loose sheet found during the course of search indicates any undisclosed income or asset or inflation of expenditure cannot be accepted.

The Hon'ble ITAT Delhi Bench **in the case of Ajay Sharma v. Dy. CIT [2013]** held that with respect to the addition on account of alleged receivables as per seized paper, there is no direct material which leads and establishes that any income received by the assessee has not been declared by the assessee. An addition has been made on the basis of loose document, which did not closely prove any concealment or furnishing of inaccurate particulars by the assessee. Hence, penalty cannot be leviable. The facts of the assessee's case shows that

there was no undisclosed income found during the course of search and no incriminating material was found, hence it was held that there is no case for imposing penalty under section 271AAB of the Act.

In case of **Rinku Agarwal in ITA No. 262/Ran/2017 dated 30.11.2018.**

In this case, in the course of search operations conducted at the Mica Mod Group on 21.11.2012, the assessee had admitted additional income of Rs.5, 00,000/- under section 132(4) which she had offered to tax in her return of income. The AO levied penalty under section 271AAB on such additional income offered to tax. The Tribunal noted that neither the Investigation Wing in the post search nor during the course of assessment proceedings, the Assessing Officer found any incriminating evidence of undisclosed income otherwise the declaration of the assessee for making the addition. Following the decision rendered in the case of ACIT Vs Kanwar Sain Gupta, the Tribunal deleted the penalty levied under section 271AAB of the Act.

Opportunity of being heard

Explanation of Sub section (3) of section 271AAB:

The provisions of section 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.

The legislature has included the provisions of section 274 and section 275 of the Act in 271AAB of the Act, with clear intention to consider the imposition of penalty judicially. Section 274 deals with the procedure for levy of penalty, wherein, it directs that no order imposing penalty shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard. Therefore, from plain reading of section 271AAB of the Act, it is evident that the penalty cannot be imposed unless the assessee is given a reasonable

opportunity and assessee is being heard. Once the opportunity is given to the assessee, the penalty cannot be mandatory and it is on the basis of the facts and merits placed before the A.O. Once the A.O. is bound by the Act to hear the assessee and to give reasonable opportunity to explain his case, there is no mandatory requirement of imposing penalty, because the opportunity of being heard and reasonable opportunity is not a mere formality but it is to adhere to the principles of natural justice.

Hon'ble A.P. High Court in the case of Radhakrishna Vihar in ITA No.740/2011 while dealing with the penalty held that, "while payment of interest is mandatory, levy of penalty is discretionary". It is trite position of law that discretion is vested and authority has to be exercised in a reasonable and rational manner depending upon the facts and circumstances of the each case. A plain reading of section 271AAB and 274 of the Act indicates that the imposition of penalty under section 271AAB of the Act is not mandatory but directory.

Accordingly it is held that the penalty under section 271AAB is not mandatory but to be imposed on merits of the each

Thus, the Tribunal has held that the levy of penalty under section 271AAB is not mandatory but the AO has the discretion to take a decision and shall be based on judicious decision of the AO.

The Tribunal has analyzed all the relevant provisions of the Act as well as various decisions on this point including the decision of Hon'ble Allahabad High Court in the case of Pr. CIT vs. Sandeep Chandak, 405 ITR 648 (Allahabad) and then arrived at the conclusion that the penalty under section 271AAB is not mandatory but the AO has the discretion to take a decision and the same should be based on judicious decision of the AO. Accordingly, it is held that the levy of penalty under section 271AAB is not mandatory but the AO has a discretion after considering

all the relevant aspects of the case and after obtaining a satisfaction that the income of the assessee falls in the definition of 'undisclosed income' as provided in the explanation to section 271AAB of the Act.

In the case of **DCIT v R. Elangovan Ltd**, ITAT Chennai, while dealing with the legal ground challenging the validity of notice issued under section 274 read with section 271AAB of the Act had observed that ;

"It is clear from the Sub Section (3) of Section 271 AAB that Sections 274 and Section 275 of the Act shall, so far as may be, apply. Sub Section (1) of Section 274 of the Act mandates that order imposing penalty has to be imposed only after hearing the assessee or giving an assessee opportunity of hearing. Opportunity that is to be given to the assessee should be a meaningful one and not a farce. In this case, the notice issued to the assessee, does not show whether penalty proceedings were initiated for concealment of income or for furnishing inaccurate particulars of income or for having undisclosed income within the meaning of Section 271AAB of the Act. Thus, the notice in our opinion for initiation of Penalty is vague".

Sandeep Chandak, Shakuntala Devi Chandak, Kamal Kishore Chandak V ACIT, 2017, ITAT Lucknow

It appears that the notice in this case has been issued by the Assessing Officer just for the sake of providing the opportunity, but this opportunity cannot be regarded to be a proper opportunity. The opportunity of being heard has been given to the assessee only in respect of the proceedings initiated under section 271(1)(c) of the Act. However, no opportunity has been given to the assessee in respect of the penalty to be levied under section 271AAB of the Act. Thus, the order passed by the Assessing Officer is against the principles of natural justice of providing the proper opportunity to the assessee and accordingly the order of the assessing

officer has been quashed. Also, section 271AAB specifies three different situations under which the penalty can be imposed on the assessee under different clauses (a), (b) and (c), the penalty has to be imposed on different rate.

In the instant case, AO did not specified in the notice in respect of which clause the penalty is going to be levied on the assessee. Thus, in case of non specification of clause of levying penalty, it cannot be sustained. Also, the provisions of section 271AAB are not mandatory which means that the penalty has to be levied in each and every case wherever the assessee has made default as stated under clauses (a), (b) and (c) of the Act. Sub-section (1) of section 271AAB uses the word "may" not "shall". "May" cannot be equated with "shall" especially in penalty proceedings. Using the word "may"gives a discretion to the Assessing Officer to levy the penalty or not to levy, even if the assessee has made the default under the said provision. Thus, penalty in the case of Assessee stands deleted.

Analysis of Hierarchy of Developments in Penalties in Search Cases

Sections	**271AAA**	**271AAB(1)**	**271AAB(1A)**
Applicability	• Between 01.06.2007 to 30.06.2012	Between 01.07.2012 to 14.12.2016	On or after 15.12.2016
Penalty rate	• 10% of undisclosed income	10% or 20% or 60% of undisclosed income	30% or 60% of undisclosed income
If immunity from penalty is available?	• Yes	No (However, concessional rate of penalty 10% is available)	No (However, concessional rate of

			penalty 30% is available)
Condition for immunity or concessional rate of penalty?	• admits undisclosed income in a statement under section 132(4)and • specifies the manner in which such income has been earned • substantiates the manner in which such income was derived • pays tax with interest, if any, in respect of undisclosed income on or before the specified date and • furnishes the return of income of the specified previous year declaring such income in the return on or before the specified date.	• admits undisclosed income in a statement under section 132(4)and • specifies the manner in which such income has been earned • substantiates the manner in which such income was derived • pays tax with interest, if any, in respect of undisclosed income on or before the specified date and • furnishes the return of income of the specified previous year declaring such income in the return on or before the specified date. If all the above conditions are satisfied then penalty	•admits undisclosed income in a statement under section 132(4)and •specifies the manner in which such income has been earned •substantiates the manner in which such income was derived •pays tax with interest, if any, in respect of undisclosed income on or before the specified date and If all the above conditions are satisfied then penalty will be levied at rate of 30%. In any other case, penalty will be levied at the rate of 60%.

	If all above conditions are satisfied then no penalty will be levied. But, If any of the above is not satisfied then penalty will be 10% of undisclosed income.	will be levied at rate of 10%. If Assessee does not declare any undisclosed income in the statement under section 132(4), but pays tax and disclosed it in his income tax return and pays tax then penalty will be levied at 20%. In any other case, penalty will be levied at the rate of 60%.	

Section 274

The legislature has included the provisions of section 274 and section 275 of the Act in 271AAB of the Act with clear intention to consider the imposition of penalty judicially. Section 274, deals with the procedure for levy of penalty, wherein, it directs that no order imposing penalty shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard. Therefore, from plain reading of section 271AAB of the Act, it is evident that the penalty cannot be imposed unless the assessee is given a reasonable opportunity and assessee is being heard. Once the opportunity is given to the assessee, the penalty cannot be mandatory and it is on the basis of the facts and merits placed before the assessing

officer because the opportunity of being heard is not a mere formality but it is to adhere to the principles of natural justice.

So for initiating the penalty proceedings under section 271AAB of the Act the first step to be taken by officer is to issue a valid notice under section 274 of the Act. To comply with this requirement the notice under section 274 should be clear enough to convey the assessee about the charge which is to be levied against him/her/it for levying the penalty for the contravention of the related provisions of the Act and thus, it is essential that in the notice issued under section 274 of the Act should mention the penalty under section 271AAB of the Act which is levied on the assessee i.e.@30%/60% .

Defective Notice

Penalty under section 271AAB is initiated by issuing a notice under section 274 read with section 271AA. Penalty under section 271AAB cannot be levied on the basis of defective notice, could not be sustained. Also, it is important to mention in notice issued under section 274 read with section 271AAB as to under which clause of section 271AAB penalty is leviable and that too, at which rate.

Shri Ashok Bhatia v DCIT, 2020, ITAT Indore, For levying penalty under section 271AAB of the Act the Ld. A.O needs to primarily issue notice under section 274 of the Act so for initiating proceedings under section 271AAB of the Act, the Ld. A.O has to first pass through the hurdle of Section 274.

In this case, three notices were issued to the assessee on 22.03.2016, 03.06.2016 and 16.09.2016, but none of the notice mention about various conditions provided under section 271 AAB. It seems that the A.O had very casually used the proforma used for issuing notice before levying penalty under section 271(1)(c) of the Act for the concealment of income or furnishing of inaccurate particulars of income. Except mentioning the Section 271AAB of the Act in the notice it does not talk

anything about the other mandatory conditions of section 271AAB. Certainly such notice has a fatal error and technically is not a correct notice in the eyes of law because it intends to penalize an assessee without spelling about the charge against the assessee.

Thus, respectfully following the judgment of jurisdictional High Court in the case of PCIT V/s Kulwant Singh Bhatia [2018, Madhya Pradesh High Court], decision of Co-ordinate Bench of Chennai in the case of DCIT V/s R. Elangovan [2018, (ITAT Chennai] and Jaipur Bench in the case of Ravi Mathur Vs DCIT [2018 - ITAT Jaipur] and in the given facts and circumstances of the case wherein the matter written in the body of the notice issued under section 274 of the Act does not refer to the charges of provision of Section 271AAB of the Act makes the alleged notice defective and invalid and thus, deserves to be quashed. Since the penalty proceedings itself has been quashed the impugned penalty stands deleted. Thus assessee succeeds on legal ground challenging the validity of notice issued under section 274 r.w.s. 271AAB of the Act.

The Indore Bench of the **ITAT in the case of Shri Ravi Mathur** has held as follows:-

Even if the AO is satisfied and come to the conclusion that the assessee has not recorded the undisclosed income in the books of accounts or in the other documents/record maintained in normal course relating to specified previous year, then also the show cause *notice* should specify the default committed by the assessee to attract the penalty @ 10% or 20% or 60% of the undisclosed income. In this case there is no dispute that the AO has not specified the default and charge against the assessee which necessitated the levy of penalty under section 271AAB of the Act. Consequently, it is held that the assessee was not given an opportunity

to explain his case for specific default attracting the levy of penalty in terms of clauses (a) to (c) of section 271AAB(1) of the Act.

Shri Mahendra B. Chowhan Versus ACIT, Bangalore, 2020, ITAT Banglore, In the this case, notice under section 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 argument of the department that the provisions of section 292B of the Act will cure the defect, if any, in the show cause notice cannot be accepted because the non-mentioning of the charge against the assessee in the show cause notice cannot be considered as a mistake, omission or defect, which is in substance and effect in conformity with or according to the intent and purpose of this Act. Therefore, penalty imposed is liable to be cancelled.

Shri Vimal Chand Surana V DCIT, Jaipur, 2019

In this case certain incriminating documents containing the entries of advance, unaccounted stock at business premises as well as residence, cash at the residence of the assessee and jewellery at the residence of the assessee were found and seized. The assessee filed his return of income under section 139(1) on 2nd September, 2015 declaring total income including the surrender of additional income. It is held that the show cause notice issued by the AO without specifying the default and ground for which the penalty under section 271AAB was proposed to be levied, renders the initiation of penalty proceedings invalid and consequently the order passed under section 271AAB is liable to be quashed.

Gillco Developers & Builders (P.) Ltd. v. DCIT [(2017) 189 TTJ 35 where Assessing Officer had intended to initiate penalty proceedings under section 271AAA(1), but assessee had been show caused on charge of furnishing of inaccurate particulars of income, which fell under scope and purview of section 271(1)(c), penalty proceedings conducted against assessee under section 271AAA were held invalid. Para 20 is reproduced hereunder:-

"20. A perusal of the above notice shows that though the Assessing officer has intended to initiate penalty proceedings under section 271AAA(1) of the Act, however, the wording written in the body of the letter does not conform to the charges of the provisions of section 271AAA of the Act, rather, the assessee has been show caused on the charge of furnishing of inaccurate particulars of income, which falls under the scope and purview of section 271(1)(c) of the Act. The assessee, therefore, is not show caused for levy of penalty under the provisions of section 271AAA, rather for doing an act inviting penalty under section 271(1)(c) of the Act, which otherwise is neither arising out of the facts of the case nor established against the assessee. Thus, the penalty proceedings conducted against the assessee under section 271AAA of the Act were invalid at its very inception because of the defective and invalid show cause notice, rendering the entire penalty proceedings void ab initio. The penalty levied against the assessee is thus not sustainable on this score also."

Though this decision is in context of section 271AAA but squarely applies in context of section 271AAB, since both the sections are pari-materia and operate under similar circumstances.

Conclusion

Thus, before the imposition of penalty under section 271AAB(1A), the assessing officer must ensure that the conditions defined should be met with. The intention of the legislature is very clear that the imposition of penalty should link with the undisclosed income and not to be imposed in every case in which search is conducted. The satisfaction recorded for imposition of penalty should disclose how the mind is applied to the subject matter available in each case for a decision which is clearly discretionary. The reasons for imposition of penalty should reveal a rational nexus between the facts considered and the conclusions reached.